

# **Signs and Right-of-Way Encroachments**

**Georgia Association of Code Enforcement  
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# What is a sign?





# The sign spinner...





FOURTH!

NO  
SPYING ON  
AMERICANS!

"Those who would  
give up essential  
liberty to purchase a  
little temporary safety,  
deserve neither liberty  
nor security."  
Benjamin Franklin



NO WARRANT  
NO SEARCH!

RESTORE

the  
4<sup>th</sup>

DON'T SPY  
ON ME!



# Should signs be regulated?

- If so, on what basis?
  - - Content?
  - - Advertising?
  - - Commercial?
  - - Political?
  - - Size?
  - - Maintenance?



**IS THIS A GOOD SIGN?**





HOW ABOUT THIS?





**BANNERS ANYONE?**



**DIRECTIONAL SIGNS – WHERE  
WOULD WE BE WITHOUT THEM?**



# Real Estate Signs





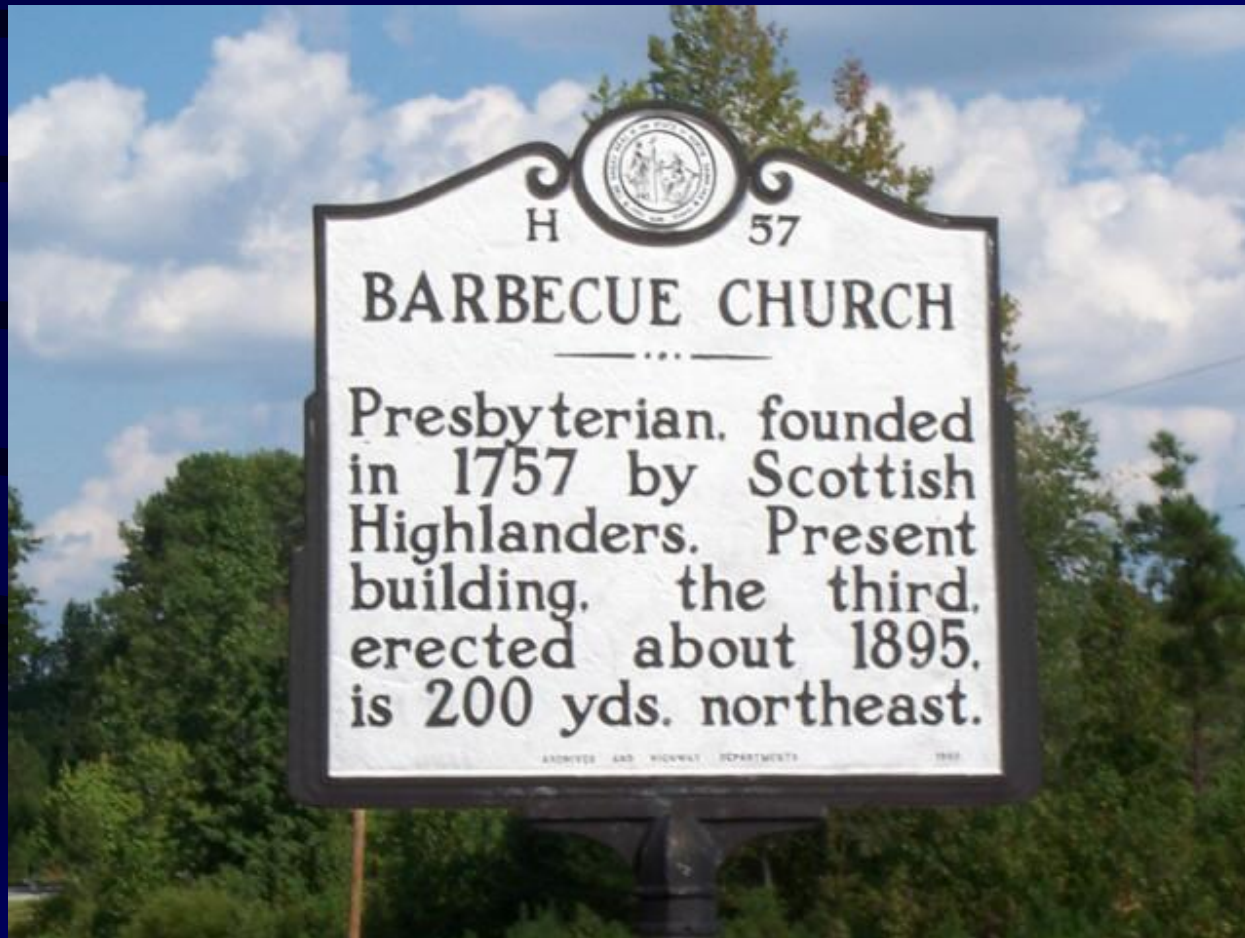
# Political Signs



# Classic signs.



# Historical markers.





# Traffic signs.



Or...



So how do we decide what is a  
good sign?



# Sources of Authority

- First Amendment
- State law
  - OCGA § 32-6-51
  - OCGA § 16-7-58
  - OCGA § 32-6-70 *et seq.*
- City / county ordinances

# OCGA § 32-6-51

- No signs in the public right-of-way without government authorization – it's a crime.
- May be removed by local government without notice to owner, or owner may be required to move.

# Signs Not in the Right-of-Way

- Signs not in the right-of-way and...
  - imitating official traffic control device,
  - hiding from view official traffic control device, or
  - obstructing clear view of road

may be removed by local government, or owner may be instructed to remove, and if he fails, local government may do it and charge the homeowner.



# Collection Procedure

- Local government gives written notice to the owner of sign or property directing removal.
- If structure not removed within 30 days, local government may remove and submit a statement of expenses to remove to owner.
- If owner does not pay within 60 days, the local government may certify the amount to the Attorney General to collect.

# OCGA § 16-7-58

- Protects political signs
- Signs within public rights-of-way are governed by OCGA § 32-6-51.
- On private property, local government is limited in its regulation of political signs.

# How do you go about removing signs during the political season?

- Be even-handed
- Keep a record
- Take photographs



## OCGA § 32-6-70 *et seq.*

- State regulates billboards on state highways.
- DOT issues permits.
- A DOT permitted sign gives the owner protected property rights which cannot be taken without compensation.
- Signs not in compliance are public nuisances.

OCGA § 32-6-97 provides that local governments may have ordinances more restrictive than the state law.

**City of Doraville v. Turner Communications Corp., 236 Ga. 385 (1976)**

# Nuisance Ordinance

- The local government can list signs in the right-of-way as a public nuisance, such that citations can be taken to the magistrate / municipal court.
- Authorize CEO to remove or require person / entity posting the sign to remove it.
- Require signs to state on the back the person / entity posting the sign with contact info.



# Sign Ordinances

Sign ordinances must be dealt with differently from other land use regulations because unlike most land uses, they are protected by the First Amendment to the U.S. Constitution:

Congress shall make no law...abridging the freedom of speech...

Likewise, signs are protected by the Georgia Constitution:

No law shall be passed to curtail or restrain the freedom of speech or of the press.

Regulate the  
structure, not the  
message.

# How Does the Sign Ordinance Challenge Typically Rise?

- Billboard challenges
- Facial challenge to the ordinance as a whole
- May strike the entire ordinance
- May award damages and attorney fees

# The Levels of Judicial Scrutiny

There are three levels of judicial scrutiny applied to zoning and land use ordinances.

## THE RATIONAL BASIS TEST

- Only requires that the local government show that the ordinance is rationally related to a lawful governmental purpose.
- It is the easiest test for the local government to meet.



# STRICT SCRUTINY

- The hardest test.
- Applies to all ordinances that regulate speech (i.e. signs) based upon the content of the message.
- In order to pass strict scrutiny, the local government must show that the ordinance is the narrowest means of achieving a compelling governmental interest.

# INTERMEDIATE SCRUTINY

- The middle test.
- Applies to content neutral, time, place, and manner restrictions.
- A local government can survive this test if:
  - it can show that the ordinance is reasonably tailored to meet a legitimate governmental interest, and
  - it leaves open ample alternative means of communication.

# Crafting Effective Sign Ordinances

## Rule 1: Avoid Content-Based Restrictions

If you have to read the sign in order to determine whether or not it is allowed, then the ordinance is content based.

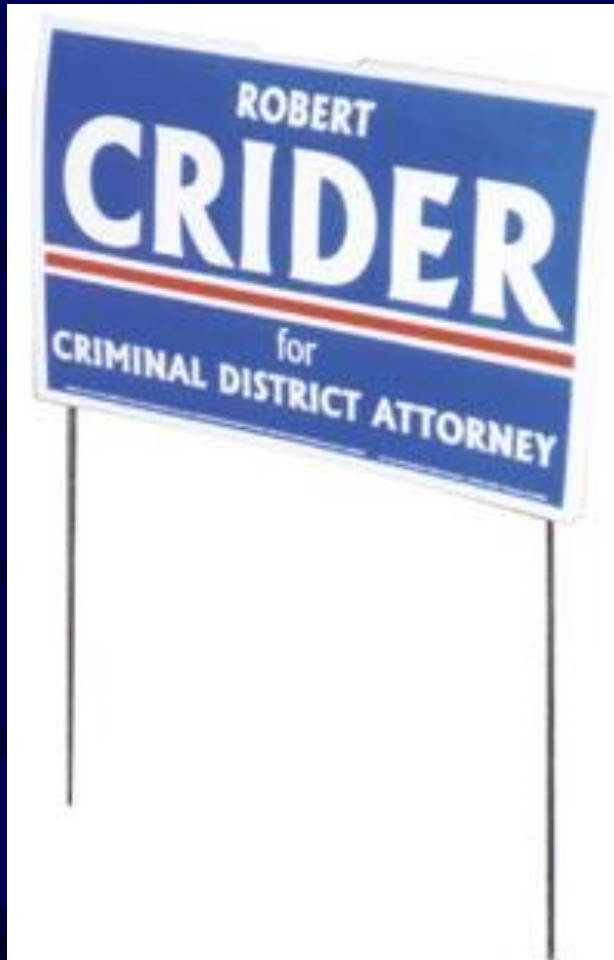
If you have to read the sign in order to determine whether or not it is allowed, then the ordinance is content based.



Everything requires a permit...



Residential lots may have one real estate sign.



Each lot may have no more than one political sign, and only for a period of 30 days before an election or primary.



Each lot may have one sign or decoration which conveys a holiday message.





No sign shall be maintained without a permit, except for signs maintained by a governmental entity, which shall not require a permit.



A sign ordinance that exempts signs of churches and religious institutions.



All signs require permits except... directional signs.





Illuminated or electronic signs are prohibited, except for signs telling the time or temperature.



Only on premises signs are permitted.





Off premises signs a/k/a "outdoor advertising signs" are prohibited.

Can any sign be regulated  
based upon its content?

GO ALABAMA! BEAT  
AUBURN!  
POISON THE HISTORIC  
OAKS OF TOOMEY'S  
CORNER!

Signs that encourage criminal behavior.

Bobby Ray, you stole my girl,  
you good for nothing son of a  
\$&(#@, and I'm gonna cut you!

Fighting words

**CLASSIFIED**

Signs that depict obscenity. OCGA § 32-6-52



Signs that tend to cause official confusion or obstruct official signs are banned by state law. OCGA § 32-6-51(b)(1)



# Other Common Problems

Failure to properly justify the sign ordinance in the record.

- evidence (studies and reports, cases)
- findings and conclusions
- purpose

# Permitting

- Unbridled discretion.
- No specified or reasonable time for decisions.
- Appeal process.

# How Do You Do It Right?

- Regulate structures only, and not message content
- Allow reasonable and adequate speech (and sign) opportunities

Table of Standard Permitted Signs.

Districts /Uses	No. of ground signs	Total area of all ground sign faces	Max area of single ground sign face	Max height of ground signs	Window Signs (number/ maximum total area)	Wall Signs (number/ max total area)	Max size of single wall sign
AU, RC	3	64 sq. ft.	32 sq. ft.	10 ft.	2, up to 8 sq. ft. total area	2/200 sq. ft.	200 sq. ft.
RR, R1, R1A, MHP,	3	20 sq. ft.	4 sq. ft.	5 ft.	2, up to 8 sq. ft. total area	None	n/a
GB	2	200 sq. ft.	100 sq. ft.	20 ft.	Can cover 25% of windows	4/200 sq. ft.	200 sq. ft.
WLI	2	400 sq. ft.	200 sq. ft.	35 ft.	Can cover 25% of windows	4/250 sq. ft.	250 sq. ft.
H-I	3	600 sq. ft.	300 sq. ft.	35 ft.	Can cover 25% of windows	4/300 sq. ft.	250 sq. ft.

- Permitting

- As a matter of right
- Fast
- Appeal process

- Maintenance

- You can regulate and require maintenance of the structure.
- International Building Code has some good provisions.

**Corey Outdoor Advertising, Inc. v. The Board of Zoning Adjustments of the City of Atlanta, 254 Ga. 221 (1985).**

Property owner did not obtain a vested right to build a sign even though the city issued a permit if the permit was invalidated because the location of the sign violated the sign ordinance.



# Right-of-way Encroachments

What is a right-of-way?

# Right-of-way vs. Easement

A public right-of-way is generally owned outright by the government.

An easement is a right to use the property in some way, such as to access an adjoining property or for a utility line, but it is **not** actual ownership of the underlying ground.

- The ownership of the underlying property includes exclusive possession. Thus, the local government can fully control the use of property in the deeded right-of-way. Even where the right-of-way is actually an easement, the local government can control the area necessary for travel.

# Proving the Right-of-Way

- A deed and plat should show the actual boundary of the right-of-way (for newer roads).
- In the context of older right-of-ways, there may not be a deed or a plat. In that case, the public right-of-way is the area that has traditionally been maintained as a road.

“Ditch to Ditch”

Right-of-ways do not exist simply because an ordinance says how wide the public right-of-way should be.

- Subdivision ordinance
- Final plat

# Word of the Day

## *Purpresture*

An encroachment upon public rights and easements by appropriation to private use of that which belongs to the public.

- *Black's Law Dictionary*



# Things Found to be Purprestures

- Oil and gas tanks
- Sidewalk telephones
- Piles of lumber
- Crates
- Powerlines and powerpoles
- Stairways

# Abatement

- An encroachment is a public nuisance and may be abated just like any other public nuisance.
- Superior court / magistrate or municipal court.

# Signs as Encroachments – OCGA § 32-6-51

- Unlawful to erect signs in the public right-of-way
- Every sign is a separate offense.
- Local governments can adopt ordinances that similarly address the issue.

# Settling

Think about the risk that the encroachment creates; does this create liability for the local government?