

INTERNATIONAL SIGN ASSOCIATION

Understanding Sign  
Codes and the Law

*Ken Peskin*

*October 29, 2010*

# Legal Issues Involved with Sign Codes

- Planners and other local officials
- End users
- Society in general



# Topics of Discussion

- I. The First Amendment
- II. The Lanham Trademark Act
- III. The Fifth Amendment
- IV. The Fourteenth Amendment
- V. The Consequences of an Illegal Sign Code
- VI. How to Tell if Your Local Code is Unconstitutional
- VII. Model Sign Codes

# The First Amendment

*“Congress shall make no law...abridging freedom of speech”*



# The First Amendment

- *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council* (1976)
- Commercial speech has legal protections under the First Amendment



# The First Amendment

- “Time, Place and Manner” restrictions
- When, Where and How
- Must be content-neutral
- Non-commercial speech vs. commercial speech



# The First Amendment

**The Interests the Government usually claims  
as a basis for sign regulation:**

- 1) Traffic Safety
- 2) Aesthetics
- 3) Reducing Clutter

# In the Interest of “Reducing Clutter”

“Improving visual appearance, establishing identity through design elements, and eliminating clutter will help to ensure the continued viability of the county’s commercial corridors.”

*(Baltimore County Master Plan 2010, pg. 168)*

# Result Might Not Be Less “Clutter”

Look at three local liquor stores.

Liberty Rd (Rt. 26) in Randallstown, Honeygo Blvd. (Byron Station) near White Marsh, and Pulaski Hwy. in Baltimore City

All use different forms of professionally-designed, quality made signage to advertise products (ignoring numerous competitors that mainly use homemade or co-branded advertiser signage)

*Which of these is least “cluttered”?*

# Shoppers Discount Liquor (Randallstown)

Numerous

window graphics

In-window (parallel to road) requires larger size for visibility

Bold, bright colors to grab attention



# Casa Mia's Wine & Spirits (Byron Station shopping center near White Marsh)

Manual changeable copy on  
shared plaza sign

Copy area separated from  
store name by another store (7-11)

Limited space requires compression,  
abbrev., and “creative license”

Employee mistakes “O” for “0” – 3x

Results in disharmony, confusion;  
unpleasant to many viewers



# Pulaski Liquor Emporium (Pulaski Highway in Baltimore City)

In rough neighborhood,  
near impound lot and  
adult businesses

Uses electronic message  
center to sell products

One sign replaces several  
banners or graphics

Despite area, store appears  
clean, less overall signage



# Which of these has least “Clutter”?



Ignore type of business or location

Which store signage:

Advertises products clearly, with least confusion?

Is least visually “jarring”?

No definitive answer, but not as clear-cut

# What in your comprehensive plans impacts sign regulations?

- Reduction of clutter
- Attracting high quality businesses
- “Export” businesses (HQs, wealth creators)
- Redevelopment of existing commercial sites
- Serving an aging population
- Addressing “urban sprawl”
- Bringing commercial/retail \$\$\$ back into community from other areas

# Community Values and Signs: Generating Business

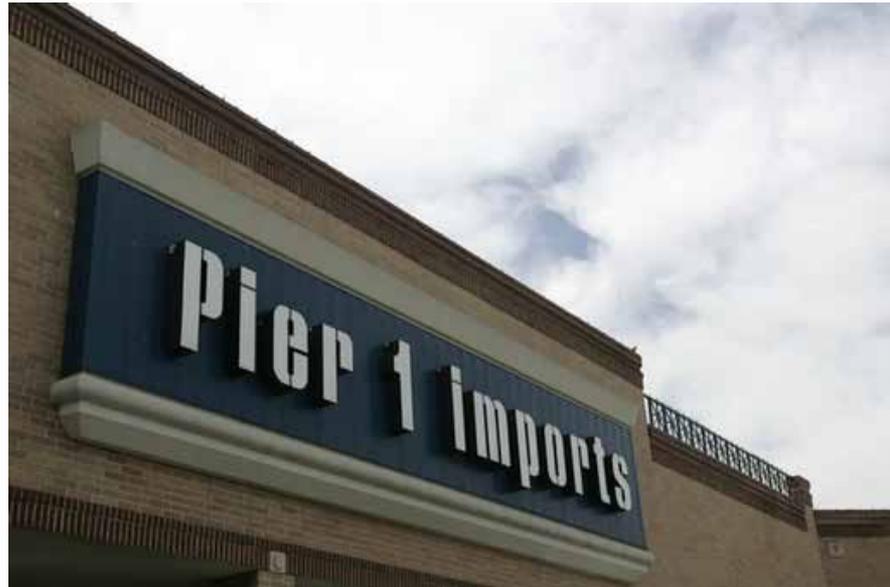
Does the sign cause a visitor to identify and understand the products or services offered?

Does the sign allow the business to create a positive image in the mind of potential customers?

Does the sign (or system of signs) allow the business to communicate a message of temporary or short-term interest?

With proper signage, can the business achieve its maximum economic potential?

## Community Values and Signs: (Pier 1 Imports, Germantown, TN)



Based on extensive market research, first-year Germantown store should have generated \$1.2 million in sales

Pier 1 invested \$124,000 in other advertising in Memphis SMSA during year (TV, radio, direct mail, newspaper)

Lack of adequate on-premise signage was only marketing difference between this and other Pier 1 stores

**Inadequate signage cost Pier 1 store: 30% of gross sales, 81% of profits, ...**

# Community Values and Signs: Community Concerns

<i>Total State Taxes</i>	<i>\$66,000</i>	<b>\$46,200</b>
<i>Total County Taxes</i>	<i>\$5,616</i>	<b>\$4,320</b>
<i>Total City Taxes</i>	<i>\$29,613</i>	<b>\$20,910</b>
<i>Total Taxes Paid</i>	<i>\$101,229</i>	<b>\$71,430</b>

**Inadequate signage cost almost \$30,000 in  
unrealized tax payments from one Pier 1 store**

# The First Amendment

No scientific evidence that signs cause traffic accidents  
Insufficient signage may actually cause unsafe driving conditions



# The First Amendment

## Relevant traffic safety studies:

- Federal Highway Administration (FHWA)  
1980 and 2001
- Richard Schwab, *Safety and Human Factors: Design Considerations for On-Premise Commercial Signs* -1998.
- Tantala & Associates – 2003 and 2007
- Virginia Tech University - 2004
- FHWA Memorandum – 2007

Manual on Uniform Traffic Control Devices

<http://mutcd.fhwa.dot.gov/>

# Attempting to Balance Aesthetic and Safety Concerns

Restrictions on height/placement cause signs to be obscured



# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



- Space for 24 tenants per side
- 22 out of 24 are too small to be functionally readable
  - Copy too small to be read and acted upon at given speeds and site conditions

# Multi-Tenant Shopping Center Case Study: The Plaza at Chapel Hills



Would a sign remodel similar to Broadridge help The Plaza's tenants?

**NO DOUBT.**

# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



Multi-tenant sign location



Easily visible from Academy

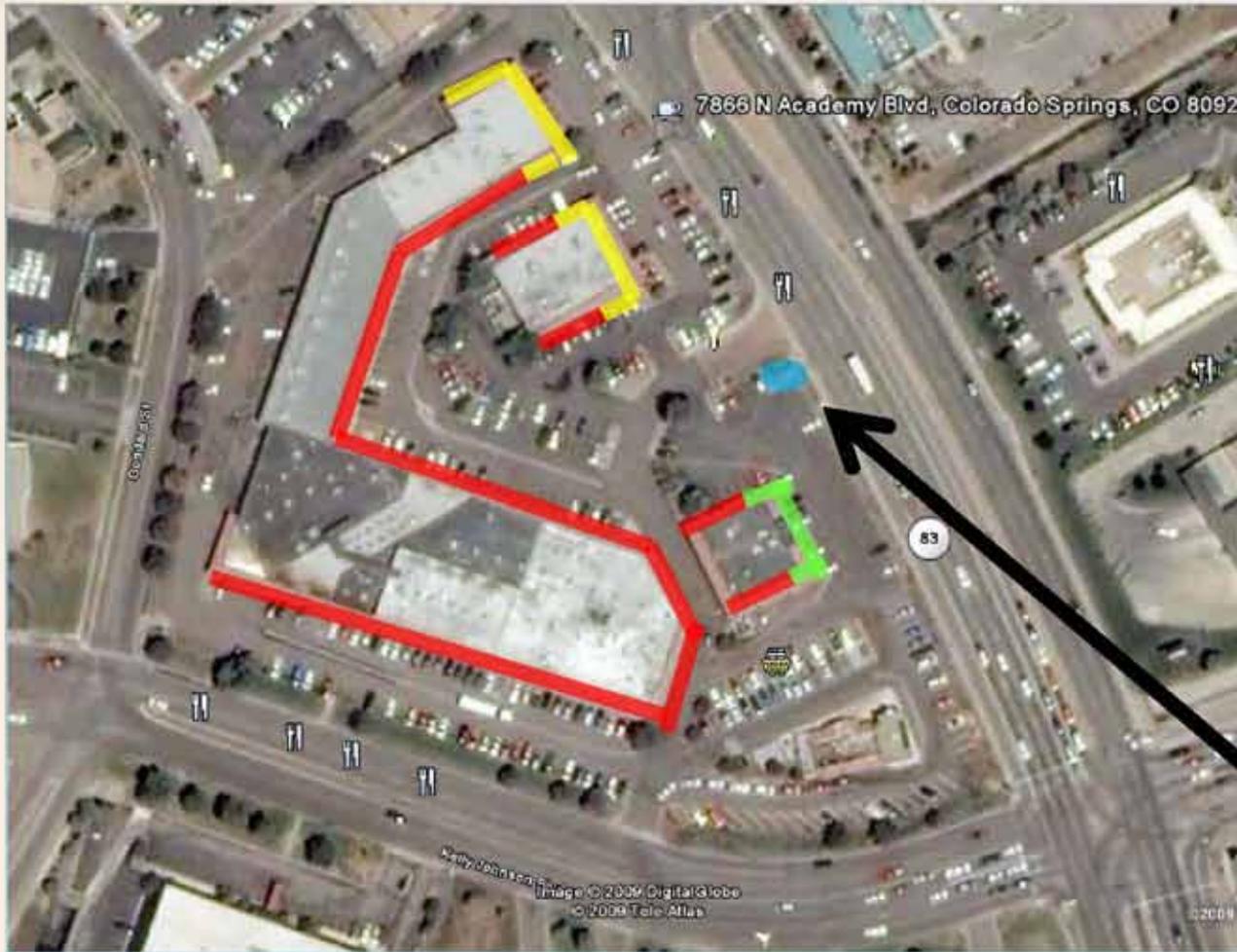


Partially obstructed view  
from Academy



Obstructed view from Academy

# Multi-Tenant Retail Case Study: The Plaza at Chapel Hills



Multi-tenant sign location



Easily visible from Academy



Partially obstructed view  
from Academy



Obstructed view from Academy

The freestanding  
sign is the  
tenant's best shot

# The "THAT ONE SIGN" Problem

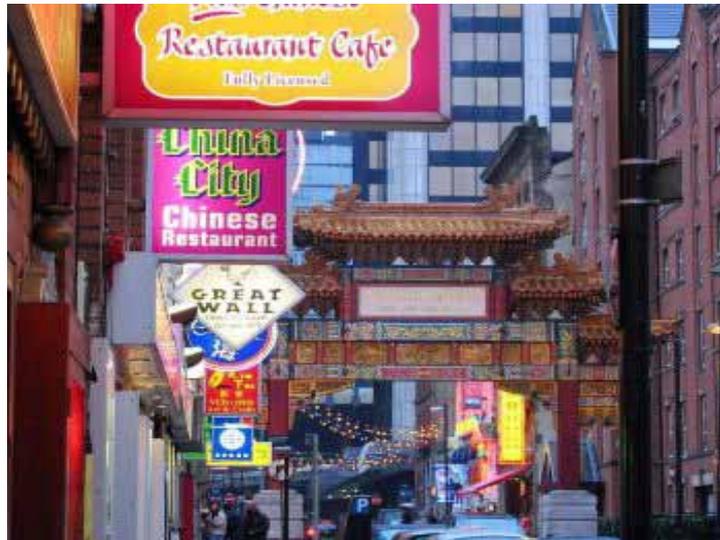
"THAT ONE SIGN" .....

- » is too bright
- » is too animated
- » is too "Las Vegas-y"
- » is too \_\_\_\_\_.



# The First Amendment

- The visual presentation is the speech
- Aesthetics are subjective
- Can limit creativity and limit messages



# A Question About Aesthetics and the Law

How do you determine if a sign is “good”?

- Attractive
- Promotes something that I consider favorable
- Well-Designed
- Professionally fabricated
- Made of high quality materials

# A Question About Aesthetics



# A Question About Aesthetics



# Are These the Same? Legally, YES!



# The First Amendment

## More U.S. Supreme Court Cases:

- *Metromedia, Inc. v. City of San Diego* (1981)
- *City of Cincinnati v. Discover Network* (1993)
- *City of Ladue v. Gilleo* (1994)
- *44 Liquormart v. Rhode Island* (1996)
- *Lorillard Tobacco Co. v. Reilly* (2001)

# Federal Trademark Law

## Lanham Trademark Act

- Protects federally registered names, marks, emblems, slogans, colors, etc
- Prohibits the government from requiring the alteration of a trademark



# Federal Trademark Law

- Dunkin Donuts sign from orange and brown to green and brown
- Home Depot sign reduced bright orange and dark brown instead of beige
- Alteration of registered trademarks happens often in shopping centers or plazas



# Federal Trademark Law

Relevant Lanham Act & Sign Cases:

*Blockbuster Video Inc & Video Update v. City of Tempe*  
9<sup>th</sup> U.S. Circuit Court (1998)



*Lisa's Party City, Inc. v. Town of Henrietta*  
2<sup>nd</sup> U.S. Circuit Court (1999)

# The Fifth Amendment

*“Nor shall private property be taken for public use, without just compensation”*



# The Fifth Amendment

## **Eminent Domain**

- The compulsory taking of private property by the government for “public use.”
- Owner of the condemned or taken property must be fully and fairly compensated
- Not just for the costs of purchasing and installing the sign, but for the value it brings to the property owner

# The Fifth Amendment

## United Advertising Corp. v. Borough of Raritan (1952)

Federal Judge and future Supreme Court Justice William Brennan:

*“The business sign is in actuality a part of the business itself, just as the structure housing the business is part of it, and the authority to conduct the business in a district carries with it the right to maintain a business sign on the premises...”*

# The Fifth Amendment

**Amortization** – Makes legally permitted signs into non-conforming signs, allows government to circumvent “just compensation”

**Accepted in:** Arkansas, Connecticut, Delaware, Florida, Illinois, Maine, Maryland, Michigan, New York, North Carolina, North Dakota, Ohio, Texas, Vermont

**Questionable in:** California, Colorado, Georgia, New Hampshire, New Mexico, Tennessee

# The Fourteenth Amendment

*“...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.”*



# The Fourteenth Amendment

## Due Process in the Permitting Process

- Regulations clear and concise
- Capable of timely enforcement
- Provide for timely appeal



# The Fourteenth Amendment

## Due Process in the Permitting Process

- “Prior Restraint”
- A scheme that places unbridled discretion in the hands of a government official or agency and may result in censorship  
*Shuttlesworth v. Birmingham*, 394 U.S. 147; or
- Failure to place time limits on the time within which the decision-maker must issue the license. (lack procedures that will ensure prompt judicial review) *Freedman v. Maryland*. 380 U.S. 51

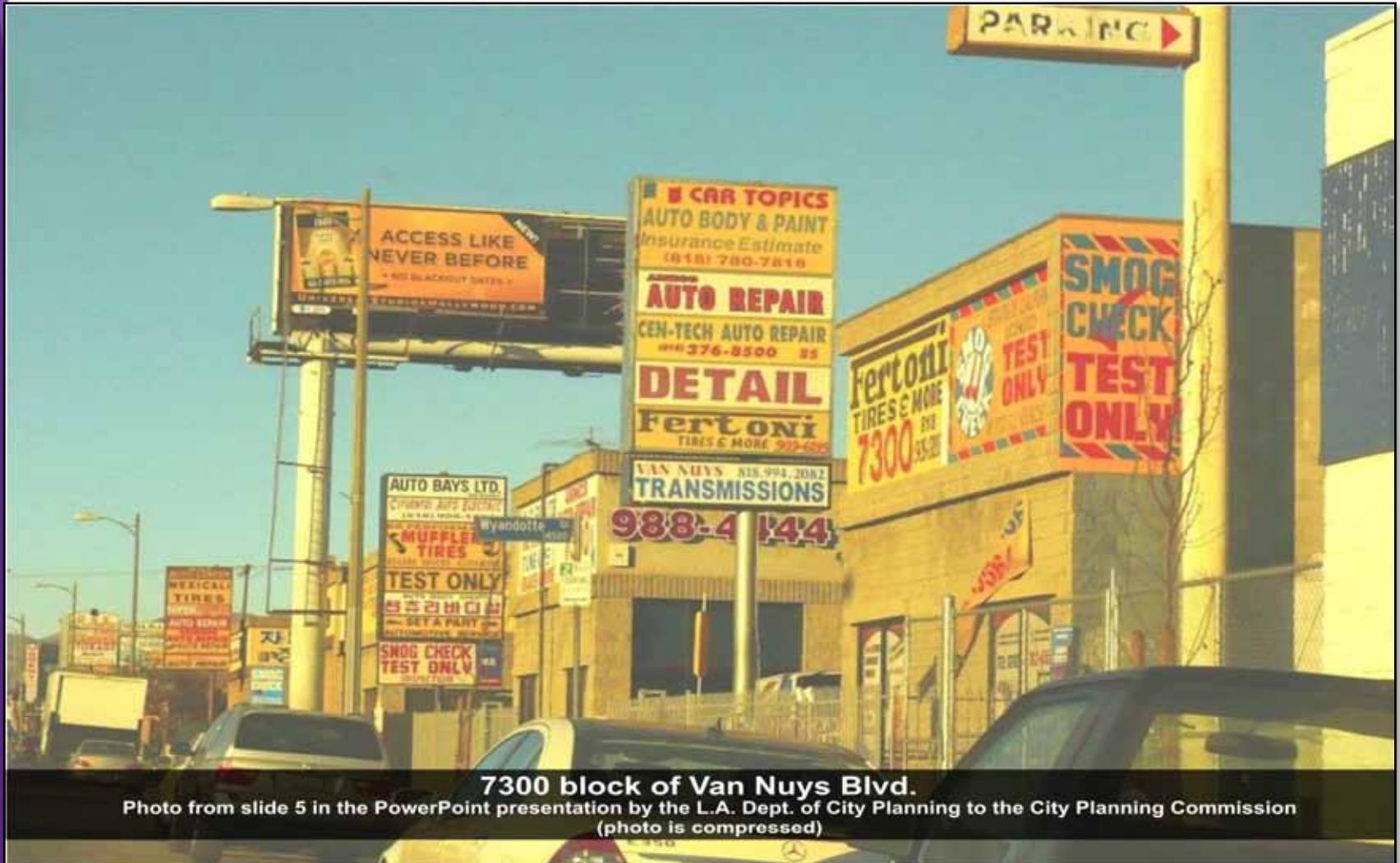
# The Fourteenth Amendment

## Equal Treatment and Protection of the Laws

- Must grant or deny a permit without regard to the type of business involved



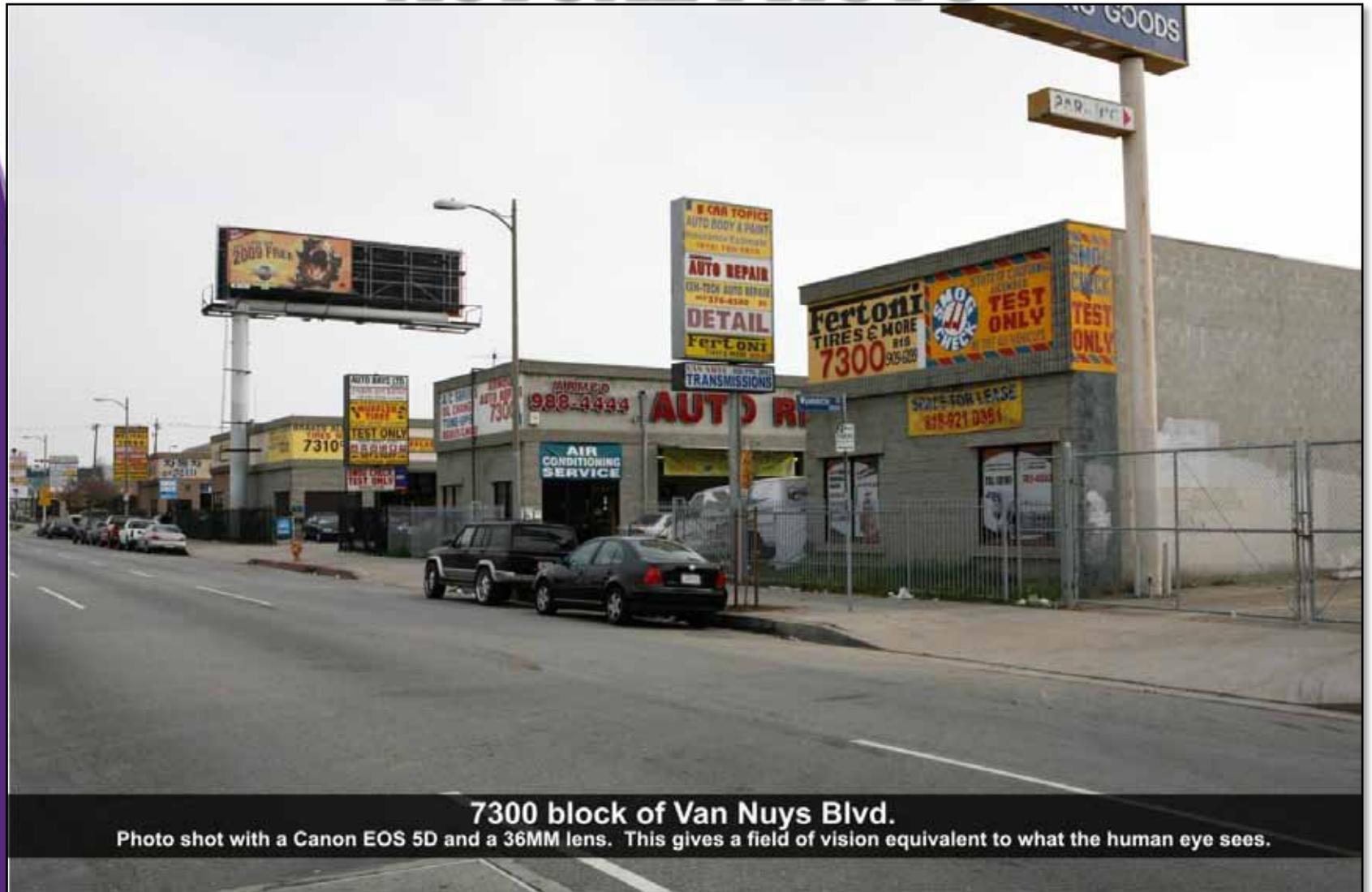
# PLANNING DEPARTMENT PHOTO



7300 block of Van Nuys Blvd.

Photo from slide 5 in the PowerPoint presentation by the L.A. Dept. of City Planning to the City Planning Commission  
(photo is compressed)

# ACTUAL PHOTO



7300 block of Van Nuys Blvd.

Photo shot with a Canon EOS 5D and a 36MM lens. This gives a field of vision equivalent to what the human eye sees.

# ILLEGAL SIGNS REMOVED



# REDESIGNED PROGRAM



Poorly designed signs replaced with properly designed signage.

# ALTERNATIVE COMPREHENSIVE SIGN PROGRAM (3 signs to 2 w/emc)



# MELROSE – PLANNING DEPARTMENT EXAMPLE

Included to verify corrected sign sizes



City Planning version



with CSA notes added

# MELROSE CENTER

## Existing signage, illegal and permitted



# IS THIS A LEGAL SIGN?

EXHIBIT PRESENTED BY PLANNING.



Pole signs don't need to be this gigantic in order to get the message across. The sign in this picture is just slightly over the current limits, at about 47 feet tall, with about 450 sq ft of sign area. In the 22 years since our sign ordinance was written, signs like this have continued to dominate our streetscapes, overshadowing storefronts, window displays, landscaping, and people. In a city struggling with gridlock and working to make it easier for people to get out of their cars, we still have sign standards that are dramatically out of scale with a pedestrian environment.

**4020 Washington Blvd. Los Angeles, CA**

# NO ENFORCEMENT! SAFETY HAZARD?

ALL CABINETS ARE ILLEGAL. COMPREHENSIVE SEARCH OF EVERY PERMIT SINCE 1940 WAS CONDUCTED (REGARDLESS OF PERMIT TYPE) AND NO PERMITS EXIST FOR ANY OF THE CABINETS ON THIS SIGN.

CORRECTED  
VERSION

UPPER PORTION OF SIGN IS THE ONLY COMPONENT THAT MAY HAVE A PERMIT. NO LEGAL ALTERATIONS HAVE BEEN MADE SINCE 1967. (It's possible that the entire structure may be illegal because the records are incomplete)



Pole signs don't need to be this gigantic in order to get the message across. The sign in this picture is just slightly over the current limits, at about 47 feet tall, with about 450 sq ft of sign area. In the 22 years since our sign ordinance was written, signs like this have continued to dominate our streetscapes, overshadowing storefronts, window displays, landscaping, and people. In a city struggling with gridlock and working to make it easier for people to get out of their cars, we still have sign standards that are dramatically out of scale with a pedestrian environment.

**4020 Washington Blvd. Los Angeles, CA**

45'-6"

All cabinets  
total 617 sq ft

This sign was permitted in 1967 and would not conform to the code implemented in the 1980's nor the current C.U.P. requirements.

# Is Your City's Sign Code Illegal?

- Does the Code differentiate based on the content of the message?
- Is there differing treatment for commercial vs. non-commercial messages?
- Are there exemptions for different messages?

# Is Your City's Sign Code Illegal?

- Are there definite and objective standards?
- How much time before there is a decision?
- How much time does it take for an administrative appeal of a permit denial?

# Model Sign Codes

Existing landscape of model sign codes?

## Obsolete Codes

### *NESEA model sign code (~1988)*

Out-of-date size standards, electronic technology radically different, no sensitivity to recent court precedents

### *ICBO Uniform Sign Code (1997)*

No longer updated after formation of ICC

# Model Sign Codes

## Continuing Codes

### *Int'l Code Council IZC/IBC (2009) (...IgCC)*

Very basic language on signs

Signage is part of overall model ordinance

### *American Planning Association (2004)*

*Street Graphics and the Law* (Mandelker)

For more than 40 years, sign industry has strongly opposed the Street Graphics approach

### *USSC Guideline Code for Regulation of On-Premise Signs (2001)*

## Model Sign Codes

*What needs were not being met through existing model sign codes?*

Most didn't represent perspective and knowledge of members of the sign industry

Those that did, represented "too much" perspective on sign industry to be viewed favorably by government officials

## Newest Model Sign Code Projects

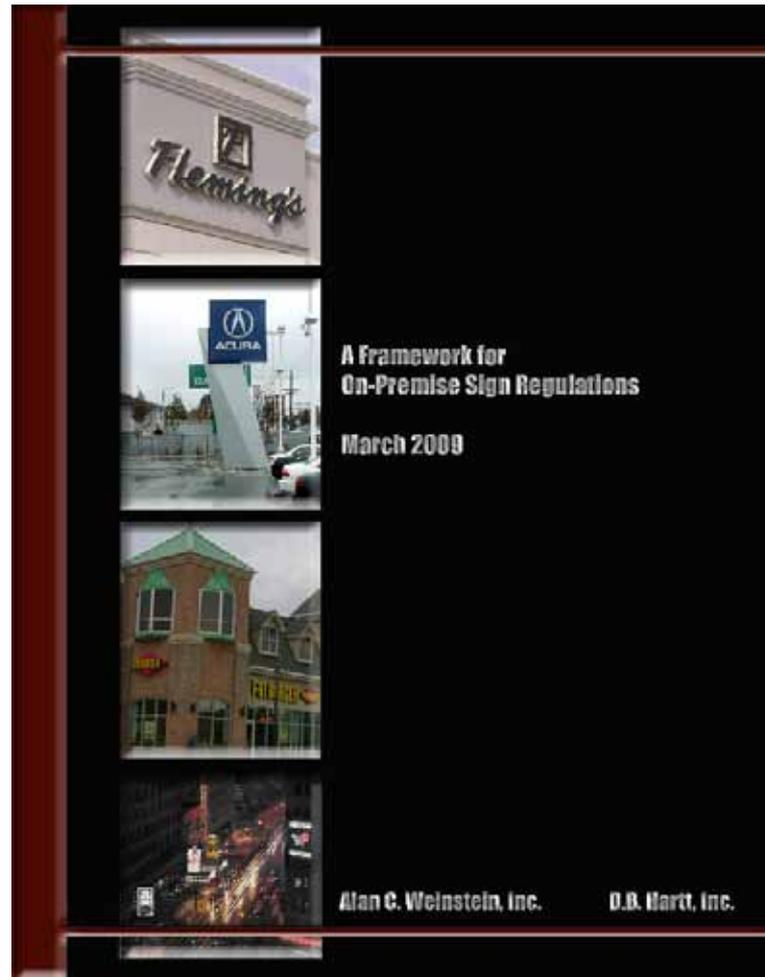
First code, *A Framework for On-Premise Sign Regulations*, was released in final form in March 2009

This code is available on disc as well as SFI website (and links from ISA website)

Second code, *A Legal and Technical Exploration of On-Premise Sign Regulation*, was released in late summer 2009 (currently off-line)

This code will be available on authors' websites (as well as through ISA)

# Signage Foundation, Inc (SFI) Code [aka Weinstein-Hartt Code]



# Urban Design Associates (UDA) Code

A Legal and Technical Exploration  
of On-Premise Sign Regulation  
**An Evidence Based  
Model Sign Code**



**Dawn Jourdan, esq, Ph.D.**  
*University of Florida*

**H. Gene Hawkins, Jr., Ph.D., P.E.**  
*Hawkins Engineering*

**Robin Abrams, Ph.D.**  
*Texas A & M University*

**Kimberly Winson-Geideman, Ph.D.**  
*University of North Texas*



INTERNATIONAL SIGN ASSOCIATION

Ken Peskin

[kenneth.peskin@signs.org](mailto:kenneth.peskin@signs.org)

[www.signs.org](http://www.signs.org)