



**July 23, 2010**

*(This is the nineteenth in a series of updates on zoning in Kenton County. The series is intended to keep city and county elected officials abreast of issues being addressed by NKAPC in the **2020 Sourcebook**, a new model zoning ordinance for Kenton County's local jurisdictions. We hope you find it timely and thought provoking and encourage you to contact us using the link below if we can provide more information or answer any questions.)*

## **Constitutional sign regulations critical to avoid litigation**

Your NKAPC planning staff has been engaged in research, discussion, and work on the *2020 Sourcebook* since 2006. During the early stages of the effort, several cities' sign regulations came under legal attack. Litigation followed. Staff worked with those cities and their legal counsel to "fix" the immediate legal issues and committed to address the rest of the constitutional questions with a more comprehensive initiative.

Subsequently, the Area Planning Commission hired consultant Eric Kelly, PhD, FAICP, of Duncan Associates, a nationally-regarded expert in sign law and author of several well-known publications on the subject to pursue a comprehensive rewrite of the community's decades-old sign regulations. Kelly holds a law degree and is an expert in the field of First Amendment rights as they apply to signage.

Staff worked with Kenton County's local governments and Dr. Kelly to draft model sign regulations. Ultimately, the proposed text went before the Kenton County Planning Commission where it was recommended for approval.

Since then, staff has worked with the county's 19 legislative bodies toward adoption of the model regulations. To date, 13 of the 19 have adopted the new sign regulations.

As drafted and approved, these sign regulations were subjected to a thorough legal review that included the most recent legal and technological challenges facing sign ordinances today. Anything short of this would have subjected the regulations and the individual communities that adopted them to legal action and probable loss in the courts.

Specifically, these signage regulations (as incorporated into the *2020 Sourcebook*):

- a. meet the "content neutral" standard established through numerous federal court decisions; content neutral regulations limit a sign's size, height, and location, not what it says, in keeping with First Amendment guarantees for free speech;
- b. exempt from regulation certain signs that are not legible from public rights of way or adjacent properties;
- c. contain provisions for menu boards for drive-through facilities;
- d. continue to prohibit billboards and other off-site commercial signage;
- e. contain provisions for changeable copy and electronic message signs;

- f. provide for permanent neighborhood entrance signs;
- g. provide for signage for institutional uses, including the use of changeable copy;
- h. regulate the number and sizes of signs permitted on each occupied lot in single and two-family zones (e.g., yard sale signs, for sale signs, political signs);
- i. provide for directory signs;
- j. permit electronic signs in office zones, highway commercial zones, limited highway service zones, limited service commercial zones, shopping center zones, and industrial zones;
- k. include provisions to address signage in Covington’s downtown and historic districts;
- l. require master signage plans; and
- m. include illustrations to provide clarity and a better understanding of its regulatory provisions.

The conflict between First Amendment rights and the need to regulate signs has prompted a number of the lawsuits in US courts. The First Amendment to the US Constitution guarantees the right of free speech and Federal Courts have ruled that signs are a form of speech and that they must be handled as such.

The *2020 Sourcebook’s* sign regulations are designed to avoid—or if necessary, withstand—any and all legal challenges.

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To contact a staff member who can answer your questions about the issues covered in this update or on the *2020 Sourcebook* in general, click [here](#).

To view past editions of this update series, click [here](#).