

A content-neutral regulation is much more likely to be upheld than one that is content-based.

In *Complete Angler*, a city's application of a regulation concerning a mural painted on a fishing store was struck down. The court found that the City's application was content-based, in that the City stated the mural of fish on a fishing store was commercial speech, but a mural of children running in a field was not. A regulation that is not content based may be upheld if it is narrowly tailor to serve a government interest (i.e. aesthetics, traffic safety), and leaves open ample alternative channels of communication.

Complete Angler, LLC v. City of Clearwater, Fla., 607 F. Supp. 2d 1326, 1333 (M.D. Fla. 2009)

In *Wag More Dogs*, the court found that the plaintiff was "barking up the wrong tree" in challenging the city's application of the sign ordinance to a mural which depicted its mascot dog. The court found that the City's ordinance, which required a permit and provided guidelines for "any word, numeral, figure, design [or] display [which] is used to direct, identify, or inform the public while viewing the same from outdoors." The Court noted that, in this case, the Zoning Ordinance merely imposes certain restrictions on "signs," on the basis of their size and location, along with whether they are commercial signs directed at advertising to and attracting customers or not. In doing so, the court found that the ordinance was content-neutral, and thus it was upheld.

Wag More Dogs, LLC v. Artman, 795 F. Supp. 2d 377, 384 (E.D. Va. 2011), aff'd sub nom. Wag More Dogs Liab. Corp. v. Cozart, 680 F.3d 359 (4th Cir. 2012)

Cities may have a substantial interest in restricting commercial speech

In *Architecture Art*, the Court found that the City's regulation of commercial speech was not unconstitutional. In this case the stated purpose of the sign ordinance is to optimize communication while protecting the aesthetic character of the City. The Court found that the City was asserting a substantial interest justifying restriction on commercial speech.

The restrictions to advance this interest include: (1) the requirement that all signs get a permit, and (2) only signs with on-premises or public interest messages are allowed. These restrictions directly advance the stated interest. Communication is optimized, while limiting outside off-premises advertising to protect the aesthetic character of the City.

ArchitectureArt, LLC v. City of San Diego, 231 F. Supp. 3d 828, 839 (S.D. Cal. 2017), reconsideration denied, No. 15-CV-01592-BAS-NLS, 2017 WL 1346899 (S.D. Cal. Apr. 4, 2017)

Providing unfettered authority to a Director or Council to review and approve/disapprove of murals may be viewed as a prior restraint.

In *Mahaney*, the City of Englewood's sign regulation was found to impose a prior restraint, in that it gave the City Manager unfettered authority to approve or disapprove of a mural. The Court noted that Englewood's special review procedure is unconstitutional under the First Amendment unless it contains the following two essential procedural safeguards to ensure expeditious decision-making by the city manager:

- (1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained;
- (2) expeditious judicial review of that decision must be available.

Therefore, to pass constitutional scrutiny, Englewood's special review procedure must require the city manager to decide whether to issue a permit within a brief, specified time period during which the status quo is maintained, and there must be the possibility of prompt judicial review in the event the permit is erroneously denied.

Mahaney v. City of Englewood, 226 P.3d 1214, 1219–20 (Colo. App. 2009), as modified on denial of reh'g (Jan. 21, 2010)