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Please join us!
 In many ways, all CSA members are our grass roots network of ambassadors throughout the state.

Call Jeff Aran, CSA Government Affairs Director or Connie Seitz, CSA Executive Director to participate.



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CSA MYTHS AND REALITIES...

By Jeff Aran, CSA Government Affairs Director

Just a few FAQ's passing through the CSA Legal Office.

ARE SIGNS SUBJECT TO CEQA?

While most jurisdictions don't fret over this, signs are generally categorically exempt from the CEQA requirements; so you should see a "neg dec" on sign projects. There is an express exemption under CEQA for on-premise signs. Public Resources Code Section 21084 includes a list of classes of projects "which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA." See 14 Cal Code of Regulations §15300, et seq (CEQA Guidelines).

Pursuant to 14 CCR §15311, dealing with Accessory Structures (Class 11), on-premise signs are categorically exempt and a negative declaration should issue. The authority cited for this provision is Public Resource Code sections 21083 and 21087. The EIR process requires first the local agency to determine whether the project is exempt. Second, if it is not exempt, an initial study must be conducted to determine whether the project may significantly affect the environment. If there is no significant effect, a "neg dec" is prepared. If there is a significant impact, an EIR is prepared. A project not otherwise exempt may nonetheless be found to be excepted under the "common sense" exception for projects where it is shown that there is no possibility that the activity may have a significant impact on the environment. 14 CCR §15061(b)(3).

Some planners nonetheless call for an EIR to be prepared based on the erroneous conclusion that because §15311 refers to "minor structures," certain on-premise signs, based on their height and size, are not included within the categorical exemption. However, neither State law nor the CEQA guidelines recognize such distinction. Moreover, "minor" within the context of CEQA does not relate so much to height and size, but to the environmental impact caused by the activity.

In *McQueen v. Mid-Peninsula* (1988) 202 Cal.App.3d 1136, the court held that the categorical exemptions are to be strictly construed and may not be used when there is substantial evidence of unusual circumstances resulting in significant impacts which threaten the environment.

CAN MY SUPPLIER OR VENDOR UNILATERALLY CHANGE THE TERMS OF A CONTRACT?

Generally—No, but strange as it seems this does happen, in particular with terms of payment (30/60 day net, etc.). The key to solving this problem is to make sure the terms and conditions are not buried in fine print on the back of a fax or among other paperwork. Also, a recent court case has held that terms and/or amended terms posted on a company's website are not binding unless the contracting party has actual notice and affirmatively agrees to the changes.

CAN A CITY IMPOSE A MORATORIUM ON NEW APPLICATIONS?

State law allows 45-day moratoriums ("interim ordinance") on permit approvals when there is an immediate threat to public health, safety or welfare. Often abused by cities and counties which seem to make very loose findings, the moratorium can be extended for two years. Although an interim ordinance may prohibit development of land uses that conflict with a general or specific plan or pending zoning ordinance, the interim ordinance cannot prohibit the processing of developmental applications. In other words, the city still must process your application. What constitutes an immediate threat to public health, safety or welfare is often a debate that applicants miss out on, because the issues often arise on short notice. Rarely does a sign application trigger an immediate threat to public health, safety or welfare, but the welfare standard is very broad, and aesthetics, as the sign industry well knows, bans on pole signs and readerboards frequently derive from interim ordinances.

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WHAT DOES ENERGY CONSERVATION HAVE TO DO WITH THE FIRST AMENDMENT?

If a regulation eliminates your ability to build a sign or communicate the message, commercial speech rights are impacted. While government does have the power to impose reasonable time, place and manner restrictions, adequately illuminate a sign, your ability to adequately communicate a message is diminished, energy regulations must be “technologically feasible” under state law.

WHAT IS ROHS AND DO I CARE?

ROHS are standards for the disposal and management of listed hazardous substances developed by the European Union which have been adopted by numerous states, including in part by California. The California restrictions focus on electronic waste but generally exempt signs and sign components. You should care about this because your customers may ask pursuant to their construction mandates whether your products are ROHS certified.

The Electronic Waste Recycling Act (EWRA) (SB 20, Sher 2003) required the California Department of Toxic Substances Control (DTSC) to adopt regulations to prohibit covered electronic devices “from being sold or offered for sale” in California if they are prohibited from sale in the European Union (EU) under Directive 2002/95/EC, “Restriction of the Use of Certain Hazardous Substances”, or RoHS. The EU’s RoHS prohibits the sale of certain electronic devices if they contain heavy metals in concentrations above specified regulatory limits.

As of January 1, 2007 DTSC adopted RoHS regulations that will restrict the use of lead, mercury, cadmium, and hexavalent chromium in certain electronic devices sold in California. These new regulations have banned the sale of some electronic devices that contain certain hazardous substances.

California’s RoHS law applies only to a “covered electronic device”,

which is defined in statute as “a video display device containing a screen greater than four inches, measured diagonally, identified in the regulations.

DTSC has not listed electric signs in its regulations. Therefore these electronic devices are not “covered electronic devices” and are not subject to the Electronic Waste Recycling Act.

For more information, visit www.calsign.org/legislation.html

HOW ARE ELECTRIC SIGNS SUPPOSED TO BE TAXED?

A contract to furnish and install an electric sign for a single (lump-sum) contract price is taxable on 33% of the contract price. For details, click: www.calsign.org/legislation.html

LOCAL NEWS RECAP

Anti-sign ordinances seem to proliferate seasonally and this past spring has seen no exception. There has also been considerable anti-billboard activity with many communities attempting to ban them outright, as well as to impose tighter regulations on temporary signage. These summaries are from newsclips received in June.

ACLU Joins Battle against Illegal Sign Ordinances. In what may be a surprise to commercial sign advocates, the ACLU has threatened litigation in *Lafayette* and *Poway* over sign ordinances that seek to control freedom of speech. Faced with the prospect of litigation over recently imposed limits on the number of

temporary signs allowed on residential property, the city of Lafayette elected to loosen its restrictions. In Poway, the city elected to postpone any final decision pending further study.

Hither and Yon... *Monterey* and *Benicia* have passed a “temporary” ban on all billboards—which can be extended for two years...

Placer County is seeking stronger enforcement over a proliferation of temporary signage in the Tahoe area...

Auburn is updating its code to provide specific guidelines...

Paso Robles denied Taco Bell a 50’ highway sign on grounds that it

did not fit the city’s “gateway” image plan (although it allowed one recently for a nearby McChevron + Subway)...

Chino is revising its ordinance to allow churches in industrial areas to have readerboards, among other things. Readerboards lend an “old time-churchy feel” to churches, according to planning commissioner K. Patterson, reports the *Chino Champion*. The city is also looking at revamping its neon restrictions to eliminate “pawn-shop type neon...”

Sacramento is updating its ordinance and has asked CSA for assistance.

DRAFT CEC revised language, Sec 148:

(b) Alternate Lighting Sources. The sign shall comply if it is equipped only with one or more of the following light sources:

1. High pressure sodium lamps; or
2. Metal halide lamps that are:

A. Pulse start or ceramic served by a ballast that has a minimum efficiency of 88% or greater, or

B. Pulse start that are 320 watts or smaller, are not 250 watt or 175 watt lamps, and are served by a ballast that has a minimum efficiency of 80%.

Where ballast efficiency is the measured output wattage to the lamp divided by the measured operating input wattage when tested according to ANSI C82.6-2005; or

3. Neon or cold cathode lamps with transformer or power supply efficiency greater than or equal to following:

A. A minimum efficiency of 75% when the transformer or power supply rated output current is less than 50 mA, or

B. A minimum efficiency of 68% when the transformer or power supply rated output current is 50 mA or greater

Where the ratio of the output wattage to the input wattage is at 100% tubing load; or

4. Fluorescent lamps with a minimum color rendering index (CRI) of 80; or

5. Light emitting diodes (LEDs) with a power supply having an efficiency of 80% or greater, or

6. Compact fluorescent lamps that do not contain a medium screw base sockets (E24/E26), or

7. Electronic ballasts with a fundamental output frequency not less than 20 kHz,

EXCEPTION 1 to Section 148: Unfiltered incandescent lamps that are not part of an electronic message center (EMC), an internally illuminated sign, or an externally illuminated sign.