

# **Impact of Signage on Economic Development and the Need for Commonsense Zoning Laws and Regulations**

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## **I. Introduction**

In these turbulent economic times, small businesses rely on effective signage to help ensure the continued viability of their companies. While regulations are a necessary part of a complex society, regulatory flexibility is needed to ensure that businesses have the ability to attract new customers and bring back existing ones. Every law and regulation should be evaluated against its impact on jobs. On premise signs<sup>2</sup> are particularly important to black-owned business, especially those located in economically disadvantaged areas. Therefore, policymakers should develop and implement zoning laws and regulations for signs in a commonsense, business-friendly manner.

## **II. Unemployment Rates Remain Unacceptably High**

The overall unemployment rate remains frustratingly high—9.1 percent, according to the latest government data.<sup>3</sup> However, the level of black unemployment is

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<sup>1</sup> The National Black Chamber of Commerce is a 501(c) (3) organization with a mission to teach capitalism and expand access to capitalization, technical support, and procurement. <http://www.nationalbcc.org/>

<sup>2</sup> “A sign whose message and design relates to a business, profession, product, service, event, or other commercial activity sold, offered, or conducted on the same property where the sign is located. The structure and face are designed in unison and are both integral parts of the sign’s message. These signs may be owned or leased.” Charles R. Taylor, Thomas A. Clark, and Susan L. Claus, *On Premise Signs as Storefront Marketing Devices and Systems*, (Small Business Administration 2005), p. 1.6.

<sup>3</sup> Economic News Release, *The Employment Situation -- August 2011*, Bureau of Labor Statistics, Sept. 2, 2011, available at <http://www.bls.gov/news.release/empsit.nr0.htm> (last accessed Sept. 7, 2011).

even worse, rising from 15.9 percent in July to 16.7 percent in August—the highest level in 27 years.<sup>4</sup> The great recession is taking its toll. Unfortunately, when the nation catches a cold, the African-American community catches pneumonia.

### **III. Small Businesses are the Backbone of the U.S. Economy**

U.S. small businesses represent 99.7 percent of all employer firms, employ half of all private-sector employees, and are responsible for 44 percent of total U.S. private payroll.<sup>5</sup> A small business is an independent business having fewer than 500 employees, according to the Small Business Administration's Office of Advocacy.<sup>6</sup> U.S. small businesses employed 59.9 million, or half of all U.S. workers, as of 2007.<sup>7</sup>

### **IV. Black-Owned Businesses Represent an Encouraging Growth Trend**

The National Black Chamber of Commerce (NBCC) was founded under the philosophy of the great Booker T. Washington. Mr. Washington believed that African Americans could thrive in America if they became educated and practiced entrepreneurship (create our own jobs and build wealth). He not only talked that, he walked it. He built the great institution, Tuskegee University, from the ground up using students to build the buildings, furniture and accessories in exchange for tuition. That university still thrives today. In regards to entrepreneurship he founded the National

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<sup>4</sup> Tim Mak, *On unemployment rate, black leaders press Obama*, Politico.com, Sept. 2, 2011, available at <http://www.politico.com/news/stories/0911/62574.html>.

<sup>5</sup> "How important are small businesses to the U.S. economy?," *FAQs: Frequently Asked Questions*, Advocacy Small Business Statistics and Research, U.S. Small Business Administration, available at <http://web.sba.gov/faqs/faqindex.cfm?arealD=24> (last accessed Sept. 7, 2011).

<sup>6</sup> "What is a small business?," *FAQs: Frequently Asked Questions*, available at <http://web.sba.gov/faqs/faqindex.cfm?arealD=24> (last accessed Sept. 7, 2011).

<sup>7</sup> "What is small firms' share of employment?," *FAQs: Frequently Asked Questions*, available at <http://web.sba.gov/faqs/faqindex.cfm?arealD=24> (last accessed Sept. 7, 2011).

Negro Business League in 1902 (ten years before the U.S. Chamber of Commerce). That is the model used by the NBCC today.

When the NBCC was incorporated in May, 1993, the U.S. Census Bureau stated that there were 300,000 black-owned businesses doing \$30 billion in sales annually. As of 2007, there were 1.9 million black-owned businesses, or approximately 7.1 percent of all U.S. nonfarm businesses, generating over \$137 billion in revenue.<sup>8</sup> Black-owned businesses represented one of the fastest, if not the fastest, growing sectors (60.5 percent compared to the national rate of 18.0 percent) of the U.S. economy between 2002 and 2007.<sup>9</sup> Despite this success, the vast majority of black-owned businesses are relatively small. Of these businesses, 87 percent had gross revenues of less than \$50,000 (compared to 65 percent of all U.S. businesses).<sup>10</sup> For those black-owned businesses with employees (i.e., not sole proprietorships or other nonemployer firms), 55.4 percent have one to four individuals on the payroll.<sup>11</sup>

Though these figures are from before the great recession, the number of black-owned businesses likely has continued to grow because entrepreneurship usually increases during bad times. This upward trend is, indeed, continuing if the NBCC's growing membership base is any indicator. People are starting to explore different

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<sup>8</sup> *Census Bureau Reports the Number of Black-Owned Businesses Increased at Triple the National Rate*, U.S. Census Bureau, Feb. 8, 2011, available at [http://www.census.gov/newsroom/releases/archives/business\\_ownership/cb11-24.html](http://www.census.gov/newsroom/releases/archives/business_ownership/cb11-24.html).

<sup>9</sup> "Black-owned businesses increased by 60.5 percent," *The St. Louis American*, Feb. 27, 2011, available at [http://www.stlamerican.com/business/business\\_briefs/article\\_9a0c359c-39ee-11e0-8b0a-001cc4c002e0.html](http://www.stlamerican.com/business/business_briefs/article_9a0c359c-39ee-11e0-8b0a-001cc4c002e0.html).

<sup>10</sup> Laurie Kulikowski, *Census: Black-Owned Firms Soar in 2002-07*, Feb. 9, 2011, available at <http://www.thestreet.com/story/11001118/census-black-owned-firms-soar-in-2002-07.html>.

<sup>11</sup> *Black-Owned Firms Number of Employer Firms by Employment Size of Firm: 2007*, U.S. Census Bureau, Feb. 8, 2011, available at [http://www2.census.gov/econ/sbo/07/final/charts/black\\_chart3.pdf](http://www2.census.gov/econ/sbo/07/final/charts/black_chart3.pdf).

business opportunities. The NBCC is on track to have its best year ever, now representing about 95,000 black-owned businesses.

## **V. Small Business Relies on Effective Signage**

### **a. Signs Help Us Communicate**

Signage is a fundamental way that we use to communicate with each other. Signs are designed primarily to cause two types of actions: 1) read and react, or 2) read and recall.<sup>12</sup> Signs help us focus on all aspects of life. Signs tell us where to go and where not to go, provide us with information about what services and products are being offered at various locations, and educate us about the places or areas that we are in or near.

### **b. Signage Helps Ensure the Economic Viability of Small Businesses**

The United States is a mobile society.<sup>13</sup> Americans love their cars and the freedom to go anywhere.<sup>14</sup> Additionally, a significant portion of the population moves every year.<sup>15</sup> Therefore, signage is incredibly important to “attract new customers, brand your [business] in the minds of consumers, and create impulse sales.”<sup>16</sup> Signs help create “top-of-mind awareness” of the company, brand, or product.<sup>17</sup> According to

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<sup>12</sup> R. James Claus and Susan L. Claus, *Understanding the Myths about Signs: Learning to Use Signage as a Planning Tool for Intelligent Community Development* (Anne Marie Melmon, International Sign Association 2001), p. 26.

<sup>13</sup> New York State Small Business Development Center, *What's Your Signage? How On-Premise Signs Help Small Businesses Tap Into a Hidden Profit Center*, (New York State Small Business Development Center 2004), p. 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Understanding the Myths about Signs* at 64.

a survey of managers at small- and medium-sized businesses, 85 percent said “they would lose sales if they did not have a sign” and suffer an average of 34.6 percent in estimated loss of sales.<sup>18</sup>

### **c. Signs Are Important Even in the Internet Era**

Even though many people now find information about businesses by searching for them on the Internet, signs help people locate those businesses when driving to them. Moreover, signs create brand awareness that is then triggered when the name comes up in an Internet search. Consumers are more likely to purchase a product or service if they have heard of the name of the product, service, or company; this would be an example of read and recall. Also, more and more signs list a company’s Web site. Therefore, signs also bring in people from the offline world into the online world, creating opportunities for additional sales; this would be an example of both read and react as well as read and recall.

### **d. Signs Are an Economical Way of Advertising**

Signage is a very economical way of communicating your brand, especially when compared to cost of other forms of advertising (e.g., TV, radio, etc.).<sup>19</sup> After paying for the sign, your product or company is advertised 24 hours per day, 365 days per year.<sup>20</sup>

To reinforce brand awareness, the design of the sign often becomes the distinctive,

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<sup>18</sup> Charles R. Taylor and John A. Murphy, “Valued Provided by On-Premise Signs: Measuring the Economic Value to the Business Enterprise,” Paper presented at NSREC 2010, Cincinnati, OH, Oct. 14, 2010, available at <http://www.thesignagefoundation.org/LinkClick.aspx?fileticket=cN5EABZA0cA%3D&tabid=59&mid=468>.

<sup>19</sup> *What’s Your Signage?* at 9.

<sup>20</sup> *Id.* at 8.

visual feature of a business' building; this is called signcentric design.<sup>21</sup> Additionally, the design of the sign is leveraged in multiple ways (e.g., Web sites, advertising, and other forms of marketing).<sup>22</sup>

**e. Signs Are Particularly Important for Minority-Owned Businesses Located in Economically Disadvantaged Areas**

Signage is particularly important for small, minority-owned businesses because such businesses often lack the financial resources to support expensive newspaper, television, or radio advertising. Also, for neighborhood-oriented businesses, local signage is simply the most practical means as well as being the most cost-effective means to communicate with their customer base.

Regulations that limit the design or use of on-premise signs make it harder for new businesses to establish their identity and location in customers' minds. The ability to change sign content and messaging may be important for small businesses that would like to provide customers with new information ranging from specials and discounts to new merchandise and services available.

**VI. Zoning Laws and Regulations Must be Commonsense and Business-Friendly**

In today's tough economy, businesses are battling for every customer. Businesses depend on marketing, including the use of signage, to attract new customers and keep existing ones. Therefore, policymakers must recognize that the ability to retain or gain market share is "fundamentally dependent" on the ability to

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<sup>21</sup> *Id.* at 10.

<sup>22</sup> *Understanding the Myths about Signs* at 55.

advertise and use signage.<sup>23</sup> Given the wide variety of businesses that use signs, a one-size-fits-all approach will not work.<sup>24</sup>

**a. “Not In My Back Yard” Arguments Must be Rejected**

Signage is just one of the many commercial activities under attack by NIMBYs (Not In My Back Yard), NOPEs (Not On Planet Earth), BANANAs (Build Absolutely Nothing Anywhere Near Anything), and CAVE people (Citizens Against Virtually Everything).<sup>25</sup> The business community must fight these activists, who try to bring economic development to a standstill by threatening every form of business expansion from building grocery stores to deploying broadband.<sup>26</sup>

For example, as part of its Project-No-Project initiative, the U.S. Chamber of Commerce recently released a study that “assesses the broad range of energy projects that are being stalled, stopped, or outright killed nationwide due to [NIMBY] activism, a broken permitting process and a system that allows limitless lawsuits by opponents.”<sup>27</sup>

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<sup>23</sup> *Id.* at 79.

<sup>24</sup> *Id.* at 86.

<sup>25</sup> Advertisement for U.S. Chamber of Commerce’s Project-No-Project Initiative *available at* <http://www.uschamber.com/sites/default/files/lra/docs/14829nimbyadfm.pdf> (last accessed Sept. 7, 2011).

<sup>26</sup> See *Residents oppose plans to develop hospital site*, WLS-TV, Feb. 28, 2011, *available at* <http://abclocal.go.com/wls/story?section=news/local&id=7986902> (detailing opposition to a proposed combined office and residential development with a grocery store occupying part of a 20,000 square foot space); and Rachel Gordon and Stephanie Lee, “Groups sue S.F., trying to halt AT&T utility boxes,” *San Francisco Chronicle*, Aug. 25, 2011, *available at* <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/08/25/BA9Q1KRKKR.DTL&type=printable> (detailing attempts by San Francisco Beautiful and other groups to halt, or slow, AT&T’s plan to install hundreds of utility boxes—containing equipment for digital television, voice, and broadband—on public sidewalks).

<sup>27</sup> Press Release, *Study: Stalled Energy Projects Costing American Economy \$1.1 Trillion and Nearly Two Million Jobs*, U.S. Chamber of Commerce, Mar. 10, 2011, *available at* <http://www.uschamber.com/press/releases/2011/march/study-stalled-energy-projects-costing-american-economy-11-trillion-and-nea>.

The results of the study illustrate that it is just as hard to site a wind farm in the United States as it is a coal-fired power plant.<sup>28</sup>

### **b. Zoning Restrictions Do Not Level the Playing Field**

Despite protestations that zoning restrictions on signs are needed to prevent “big-box retailers” or national chains from taking over a community and driving out local stores, small businesses are the ones that suffer most from these restrictions.<sup>29</sup> Major corporations and local franchises have large budgets and sophisticated marketing campaigns to communicate with consumers.<sup>30</sup> However, as previously discussed, a non-franchised, small business that lacks these resources and, instead, depends primarily on signage for advertising will be disproportionately harmed.<sup>31</sup>

Moreover, these restrictions are not technology neutral. On one extreme, they tend to favor companies that can afford to develop innovative ways (e.g., building signcentric buildings or purchasing sign technology not yet regulated) to circumvent these codes.<sup>32</sup> On the other, they tend to inhibit the development or use of new sign technology (e.g., electronic messaging).<sup>33</sup>

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<sup>28</sup> *Regulating Chaos: Finding Legislative Solutions to Benefit Jobs and the Economy*, Hearing Before the Subcommittee on Environment and the Economy of the H. Comm. on Energy and Commerce, 112th Cong., (July 14, 2011) (testimony of William L. Kovacs), at 8, available at <http://www.uschamber.com/issues/testimony/2011/testimony-regulating-chaos-finding-legislative-solutions-benefit-jobs-and-econ>.

<sup>29</sup> *Understanding the Myths about Signs* at 83.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 82.

<sup>33</sup> *Id.*



### **c. Restricting Signs for Aesthetic Reasons Often Fails to Achieve Intended Goals**

By overlooking the distinction between commercial and residential areas, policymakers, NIMBYs, and other activists threaten the economic survival of countless businesses, and by extension, the communities in which they are located. In the United States, many signs are synonymous with the city in which they are located (e.g., Las Vegas), delineate major tourist areas (e.g., Times Square), identify major retail or commercial zones (e.g., Fifth Avenue in New York City or Rodeo Drive in Beverly Hills), or are major tourist attractions themselves (e.g., the Hollywood sign).<sup>34</sup>

Unfortunately, many localities and activists do not take into account all of the benefits that compelling, effective signage can offer. For example, Scenic Texas, Inc., “a 501(c) (3) non-profit organization dedicated to the preservation and enhancement of Texas’ visual environment,”<sup>35</sup> established a Scenic City Certification Program that forbids a city from applying unless that community, among other things, has: 1) a strictly regulated and enforced sign code, and 2) a ban on new billboards.<sup>36</sup>

In Buffalo, a jeweler is complaining about local regulations related to electronic signage.<sup>37</sup> According to the provision, which has not been updated in decades, businesses that employ flashing or scrolling signs can only advertise for a maximum of 10 minutes per hour.<sup>38</sup> The other 50 minutes must be dedicated to time, temperature,

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<sup>34</sup> *Understanding the Myths about Signs* at 96.

<sup>35</sup> <http://www.scenictexas.org/> (last accessed Sept. 9, 2011).

<sup>36</sup> <http://www.sceniccitycertification.org/index.html> (last accessed Sept. 9, 2011).

<sup>37</sup> Brian Meyer, “Jeweler thinks laws about sign are unfair,” *Buffalo News*, Aug. 21, 2011, available at <http://www.buffalonews.com/city/communities/buffalo/article529064.ece>.

<sup>38</sup> *Id.*

stock market quotations, or other “items of general public interest.”<sup>39</sup> A local government official is reported to have said, “These flashing signs cause more clutter on our streets....There should be some public benefit to them.”<sup>40</sup>

Especially, at a time when businesses are struggling to attract customers, these types of restrictions make no sense. By handcuffing businesses’ ability to communicate, stringent zoning laws designed to foster perfectly cultivated communities can have the opposite and unintended effect of creating closed storefronts and other forms of urban blight. For example, if store after nearby store goes out-of-business, not only will property values decline but so will revenues at the remaining business as customers shy away from areas that are foreboding or boarded up. When residents already feel over-taxed and complain about the loss of government services, it is the wrong move to pursue zoning policies that will cause city coffers to suffer even greater declines in revenues from tumbling property and incomes taxes.

#### **d. Restricting Signs for Traffic Safety Reasons Often Fails to Achieve Intended Goals**

Many local communities assert that sign restrictions promote traffic safety by reducing driving distractions. However, these regulations fail to recognize that traffic safety may be compromised by poor signage.<sup>41</sup> The more complicated the driving pattern or scenario (e.g., multiple lanes, complex intersections, etc.), the more that easy-to-read signs matter.<sup>42</sup> For example, if a local zoning code restricts the height of

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *What’s Your Signage?* at 50.

<sup>42</sup> *Understanding the Myths about Signs* at 25.

an on- premise sign, a driver may not be able to view that sign if it is obstructed by parked cars or traffic.<sup>43</sup> Such a situation needlessly prompts drivers to engage in unwise driving behavior, such as abrupt u-turns or quick lane changes.<sup>44</sup>

**e. Amortization Does Not Adequately Compensate Sign Owners**

Sometimes when zoning authorities pass new regulations, they grandfather in signs for a period of time under an amortization theory.<sup>45</sup> The regulators assume that a sign is only worth what it cost, and once that cost is recouped, the locality can demand that the sign be removed with no additional compensation to the sign owner.<sup>46</sup> However, the above calculation does not take into consideration the value that the sign has brought to the business owners.

Four common measures of any advertising/marketing campaign are used to judge the effectiveness of a sign: 1) reach, 2) frequency, 3) readership, and 4) cost per thousand exposures.<sup>47</sup> In determining the value of the sign beyond its initial cost, one must consider: 1) the percentage of the target market exposed to the message, 2) the message repetitions received by the viewer; and 3) the cost to reach a given number of people.<sup>48</sup>

Several states now prohibit amortization of signs as a way of dealing with non-conforming signs, and, instead, require monetary compensation for the sign owner if the

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<sup>43</sup> *What's Your Signage?* at 50.

<sup>44</sup> *Id.*

<sup>45</sup> *Understanding the Myths about Signs* at 71.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 60.

<sup>48</sup> *Id.* at 63.

zoning authority decides to demand the removal of or otherwise restrict a recently conforming sign.<sup>49</sup> Amortization is prohibited at the federal level. The Highway Beautification Act,<sup>50</sup> which directs states to “maintain effective control of billboards/outdoor advertising along its Interstate and federally aided primary highways,”<sup>51</sup> requires local governments to pay billboard owners before a nonconforming billboard can be removed.<sup>52</sup>

**f. Some Localities Are Starting to Recognize the Importance of Business-Friendly Signage Regulations**

In August 2011, Arlington County, VA released preliminary draft regulations that would incorporate best practices in sign regulation to make the locality’s sign ordinance easier to understand, use, administer, and enforce.<sup>53</sup> For example, a ban on sandwich board—or A-frame—signs on sidewalks would be reversed, so long as six-feet of clear sidewalk is able to be maintained.<sup>54</sup> Staff reportedly is also examining alternate solutions where a six-foot clearance is not possible.<sup>55</sup> Additionally, the proposed rules would repeal regulations that currently state that lettering and logos on umbrellas count

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<sup>49</sup> *Id.* at 73.

<sup>50</sup> 23 U.S.C. § 131.

<sup>51</sup> *Signage and Billboards*, Indiana Department of Transportation, available at [http://www.in.gov/indot/div/projects/i69planningtoolbox/\\_pdf/Signage%20&%20Billboards.pdf](http://www.in.gov/indot/div/projects/i69planningtoolbox/_pdf/Signage%20&%20Billboards.pdf). (Last accessed Sept. 12, 2011).

<sup>52</sup> *Policy Guide on Billboard Controls*, American Planning Association, Apr. 1997, available at <http://www.planning.org/policy/guides/pdf/billboardcontrols.pdf>.

<sup>53</sup> *County Releases Draft of New Sign Regulations*, ARLnow.com, Aug. 24, 2011, available at <http://www.arlnow.com/2011/08/24/county-releases-draft-of-new-sign-regulations>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

toward the maximum total area permitted for signs.<sup>56</sup> Restaurants, for example, would benefit by being allowed to use branded umbrellas.<sup>57</sup> The NBCC strongly encourages other localities to follow suit and examine whether commonsense, business-friendly changes can be made to their signage laws and regulations.

## **VII. Conclusion**

Small business entrepreneurs of this great nation generate 70 percent of all new jobs in America. If you want more jobs, then support the development and expansion of more small businesses. Imposing burdensome restrictions on small businesses at a time when this country needs jobs and needs small business growth is counter intuitive.

As the economic status of African-Americans is at the bottom “rung” of the American economy, they will suffer the most from regulations that hinder small businesses. By restricting signage-based advertising, black-owned businesses will suffer from a consumer base that is weakening and that will greatly lessen the opportunity to create more jobs. Hence, the staggering 16 percent unemployment level may even increase.

The National Black Chamber of Commerce urges policymakers to recognize that this nation's small business economy is still very, very fragile, and that zoning laws and regulations must be commonsense and business-friendly.

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<sup>56</sup> *Proposed Sign Regulations*, Arlington County, VA, Aug. 22, 2011, available at <http://www.arlingtonva.us/departments/CPHD/planning/studies/pdf/file82827.pdf>.

<sup>57</sup> *County Releases Draft of New Sign Regulations*.