



LEGISLATIVE ALERT

House Bill 21-1310

Associations Must Act Quickly to Regulate Flags and Signs

On July 2, 2021 Governor Polis signed House Bill 21-1310 into Law, which broadens protections provided to homeowners who want to display flags or signs on their property. Previously, C.R.S. § 38-33.3-106.5 has narrowly allowed homeowners to display American flags, Service Flags and Political signs. Associations have been required to allow American Flags displayed in a manner consistent with the federal flag code and to permit certain Service Flags for the armed forces. The statute also required Associations to permit political signs 45 days before an election and seven days after an election.

HB 21-1310 eliminates the narrow language permitting American Flags, Service Flags and Political Signs and replaces it with the following:

Flags:

The Association shall not prohibit or regulate the Display of Flags on the Basis of their subject matter, message or content; except that the Association may prohibit Flags bearing commercial messages. The Association may adopt reasonable, content-neutral rules to regulate the number, location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

Signs:

The Association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message or content; except that the Association may prohibit signs bearing commercial messages. The Association may establish reasonable, content neutral sign regulations based on number, placement or size of the signs or on other objective factors.

House Bill 21-1310 opens the door for owners to fly flags or post signs with limited restrictions on their number, size, and content. The Association is burdened with enacting “reasonable, content-neutral rules” to regulate the number, size, and locations of flags, flagpoles, and signs prior to the effective date of the Amendment. If an Association fails to develop rules and policies regulating flags and signs prior to the effective date of the House Bill 21-1310, the Association will lose the ability to regulate flags and signs within the Association.

House Bill 21-1310 limits Associations to regulating the location, number, and size of flags. Associations cannot limit the content of flags except to prevent them from having commercial messages. The amendment allows Associations to regulate the number, placement and size of signs displayed within an Association and also provides that signs can be regulated based on “other objective factors.” These objective factors can be determined by the Association. This provision can be used to prohibit sign content that may be offensive or objectionable, such as nudity or profanity, but most likely would not extent to other content restrictions.

It will be difficult for Associations to regulate the display of flags and signs without running afoul of the new amendment. Associations should take action sooner rather than later to enact reasonable, content-neutral rules and regulations regarding flags and signs. We urge Associations to contact an attorney to update their policies, rules, and regulations consistent with House Bill 21-1310 so they do not lose the opportunity to do so.

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