

# Landscape Act or how cities will combat advertisements

The Act on Amendment of Certain Acts in Connection with the Enhancement of Landscape Protection Measures, or the Landscape Act, became effective already in 2015, but it was not until now that businesses were affected by its provisions. However, in many cities and municipalities work has been underway to free public space from excess advertising media using the measures introduced by the Landscape Act. Some local authorities work on the adoption of drafts of relevant advertising rules, including in Gdynia, Gdansk, Krakow, Lodz and Warsaw.

The basis for further deliberations is the definition introduced by the Landscape Act. For the purposes of the new regulations, an advertisement consists in the distribution in any visual form of information promoting persons, businesses, goods, services, projects or social movements. An advertising board is a physical object designed or used to present an advertisement, together with its structural elements and fixtures, with a flat area used to present an advertisement, in particular an advertising banner, advertisement put on building windows and advertisements placed on scaffolding, fencing or construction site equipment, excluding small objects of everyday use used in accordance with their intended purpose. Under the Act, advertising equipment comprises physical objects designed or used to present an advertisement, together with its structural elements and fixtures, other than an advertising board, excluding small objects of everyday use used in accordance with their intended purpose. Thus, the adoption of the new regulations may be of great significance to investors, both providers and recipients of advertisements set up on constructed buildings or buildings undergoing repair work, scaffolding or fencing.

Under the new provisions introduced to the Act on Spatial Planning and Development through the Landscape Act, the municipal council may adopt rules and conditions for setting up advertising boards and advertising equipment as well as fencing, including their size, quality standards, and materials that may be used to make such advertising boards and equipment. With respect to signboards, a relevant resolution may also specify the number of signboards that may be placed on a given property. The municipality may even prohibit the setting up of fencing, advertising boards and equipment, except for signboards. A resolution of the municipal

council may provide for different conditions applicable to advertisements in different areas of the municipality. Such a resolution constitutes an act of local law.

The adoption of such resolution requires numerous consultations with other public administration authorities as well as public consultations preceded by a relevant announcement in the local press.

After the adoption of the resolution, entities responsible for installing advertising media will have 12 months for adjusting them to new regulations. Otherwise they will be subject to severe penalties. Therefore, even today it appears that it is worth providing for relevant obligations related to new regulations in all types of commercial contracts under which advertising media may be set up.

Pecuniary sanctions for failure to comply with the requirements set out in the resolution will be imposed by the *wojt* (commune head), the *burmistrz* (mayor) or president of the city/town by way of an administrative decision. The decision may also include an order to remove an advertisement or adjust it to the applicable regulations. The amount of the pecuniary sanction will be the product of the area of an advertising board or equipment and the advertising charge rate applicable in a given municipality, with the penalty calculated for each day of breach.

The sanction may be imposed on the entity which installed the advertising board or equipment, and if such entity cannot be identified, the owner, perpetual usufructuary or owner-like possessor of the property or building structure on which such advertisement is placed will be liable.

Breach of the rules and conditions concerning installation of advertisements specified in the municipality council's resolution will also result in the investor's liability under the Building Law, as the definition of a struc-

ture in the Building Law has been extended to include "advertising boards and equipment permanently attached to land", and the criteria for compliance with the law have been extended to reflect the building's or activities' compliance with all acts of local law.

One of the measures aimed at eliminating aggressive advertisements which may distract motorists is also the amendment of the Act on Public Roads introduced under the Landscape Act. The amendment consists in addition of Art. 42a, which limits the possibility of installing illuminated advertising boards, depending on the type of road, by prohibiting e.g. display of moving images, use of other visual effects or frequent change of the displayed screen. This does not apply to small advertising media which do not exceed the dimensions specified in the Act.

In addition, the Landscape Act introduces a requirement to obtain the approval of the conservation officer for setting up advertising boards, advertising equipment and technical equipment on buildings entered in the register of historical monuments. Failure to meet that requirement constitutes an offence. Investors fear that this requirement will make it more difficult to renovate buildings of historical value where renovation work is often financed by long-term display of advertisements.

It should be noted that the solutions introduced by the Landscape Act raise serious concerns of constitutional experts. A complaint against the Landscape Act was filed with the Constitutional Tribunal because, among other things, the Act introduces liability for advertising media installed before the entry into force of the Act, which according to those who submitted the complaint means retrospective application of the law. Thus, part of municipalities are reluctant to adopt a relevant resolution because if the Act turns out unconstitutional, businesses may claim compensation, not only for the amounts of imposed and paid penalties, but also for the lost profits resulting from removed advertisement boards and equipment.

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