ARAPAHOE COUNTY
COLORADO'S FIRST

BOARD SUMMARY REPORT

Date: June 1, 2020

To: Board of County Commissioners

Through: Jan Yeckes, Planning Division Manager

From: Kat Hammer, Planner II

Subject: Colorado Department of Transportation Proposed Rule Change Governing Outdoor Advertising in Colorado

Direction/Information
The purpose of this study session is to update the Board of County Commissioners (BOCC) regarding Colorado Department of Transportation (CDOT) desire to modify a portion of the rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules).

Staff is scheduled to attend a virtual webinar workshop on June 1, 2020 to provide input on CDOT's proposed four rule changes and provide formal comment.

Request and Recommendation
Staff requests feedback from the Board on the proposed rule changes prior to staff submitting formal comment to CDOT. Staff will draft formal comments based on input from the Board. The deadline for written comments is June 19, 2020.

Background
CDOT enforces rules for outdoor advertising along state and interstate highways. CDOT is considering modifications to several sections of their rules, which are discussed in greater detail below.

Links to Align Arapahoe

This request contributes to the "Quality of Life" for Arapahoe County Citizens to the extent that with direction from the Board, staff can make comment on proposed CDOT rules that may affect how CDOT permits signs within unincorporated Arapahoe County.

Discussion

CDOT's proposed changes are limited to only the following rules:

- Conditions that Prohibit CDOT from Renewing a Permit in Rule 2.3

CDOT is proposing a rule change to ensure CDOT is not prohibited from renewing permits for nonconforming signs. The proposed rule change still prohibits CDOT from renewing permits for signs that are damaged, unsafe, or unsightly by reason of lack of maintenance or repair. Staff supports the change to prohibit CDOT from renewing permits for signs that are damaged, unsafe or unsightly by reason of lack of maintenance or repair. Staff does not believe this rule change, if approved or denied, will alter the existing, nonconformance status of billboards in unincorporated Arapahoe County.

The current Arapahoe County Land Development Code (LDC) identifies all the existing billboards in unincorporated Arapahoe County as non-conforming. Some of the nonconformities include: constructed prior to our USR process, constructed in an area without the correct zoning, constructed on unplatted property, or becoming nonconforming because they no longer meet minimum setbacks from residential zoning. Section 6-4, Nonconformities, of the LDC recognizes that there exist uses of land and structures that were lawful before the LDC was adopted or amended, but which would be prohibited, regulated or restricted under the provisions of the LDC. Section 6-4.1 does not permit nonconformities to be enlarged, expanded or increased. The LDC restricts maintenance and repair for nonconforming billboards to 50 percent of the current replacement cost of a nonconforming structure. The current Arapahoe County regulations recognize the eventual termination of billboards which do not conform to the current regulations as both reasonable and desirable. CDOT's proposed change would not affect Arapahoe County nonconforming status and staff therefore has no concerns with the proposed change.

- Defining when Signs are "On-Premise" in Rule 6.02

  CDOT is proposing this change in an effort to provide more clarity concerning when a sign is On-Premise rather than Off-Premise. On-Premise signs are largely excluded from CDOT's outdoor advertising control. Arapahoe County staff supports this proposed change and staff has received positive feedback from the billboard industry regarding this distinction. This rule change would prohibit On-Premise signs from advertising off-site goods and services. An example of an On-Premise sign advertising off-premise goods and services is the sign located northwest of I-25 and County Road 36 on the property used for Unser Racing. The sign was approved as part of the Unser Racing use and soon after it was constructed, the sign was advertising for goods and services for businesses other than Unser Racing.

- Spacing of Signs in Areas Zoned by Law for Commercial or Industrial Uses in Rule 7.00(D)(2)(b) that are outside of incorporated areas, adjacent to interstates or freeways, and within 500 feet of an interchange, intersection at-grade, or rest stop

  CDOT is re-examining this rule in light of highway design principles, developments in outdoor advertising laws and regulations, and the possibility to conserve department resources. Currently, the rule prohibits signs within 500 feet of an interchange or an at-grade intersection, if that location is within an unincorporated area – even if that unincorporated area is otherwise urban in character. The existing rule effectively prohibits

billboards along much of Parker Road, US-285, and at the I-25 interchanges in unincorporated Arapahoe County. CDOT is proposing three options regarding this rule:

1. Clarify the rule. This option clarifies that CDOT does prohibit signs within 500 feet of an interchange or an at-grade intersection if the location is unincorporated.
2. Classify those locations as urban areas. This option would limit the prohibition of within 500 feet of an interchange, intersection at grade, or safety Rest Area to outside"Urban Areas" as opposed to outside incorporated areas as is currently specified in the rule.
3. Repeal the rule. This option would remove the 500-foot requirement from all interchanges and at-grade intersections.

After initial review of the options presented, some of the options would allow signs within 500 feet of unincorporated interchanges. This change would affect the I-25/Belleview and I-25/County Line interchanges and Interstate 285 and South Knox Court intersection in unincorporated Arapahoe County. Staff recommends option 1 above: clarifying the rule so that it is clear that in unincorporated areas within 500 feet of otherwise urban interchanges, these types of signs are prohibited. Staff suggests if a property owner wants to erect a billboard within 500 feet of an urban interchange, the applicant should seek annexation into an adjacent municipality, which would remove CDOT's 500-foot setback requirement.

- Allowance of and processes for Declaratory Orders in Rule 13.00

  CDOT is proposing a new rule to allow for petitions from the public to terminate controversies or to remove uncertainties of any statutory provision, rule or order under the Outdoor Advertising program. CDOT indicates this new rule is necessary in order to conform to Section 24-4-105 (11) Colorado Revised Statue in regard to due process. Staff does not object to this proposed rule change.

Alternatives
The Board has several options regarding the proposed billboard overlays:

A. Proceed with Recommended Staff Comments
   Staff recommends this option to move forward submitting formal comments regarding the proposed changes.

B. Modify the Recommended Staff Comments
   Comments could be added to or removed from the proposed comments prior to formal submittal to CDOT.

C. Request Additional Information
   Staff could present additional alternatives at a future study session; however, formal comment to CDOT are due June 19, 2020.

Fiscal Impact
No fiscal impacts regarding the proposed rule change and formal staff comments.

Concurrence
Staff is seeking Board direction. However, staff has discussed this with the following Arapahoe County Divisions and agencies:

- Current Planning Program, Planning Division, Public Works and Development
- County Attorney's Office

Reviewed By
Jan Yeckes, Planning Division Manager
Robert Hill, Senior Assistant County Attorney
Bryan Weimer, Public Works and Development Department Director
Todd Weaver, Finance Department Director
John Christofferson, Deputy County Attorney

DEPARTMENT OF TRANSPORTATION

Executive Director

RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

2 CCR 601-3

Rule 2.3

Rational for Proposed Changes: CDOT is proposing a rule change to Rule 2.3 to ensure CDOT is not prohibited from renewing permits for nonconforming signs, but still prohibits CDOT from renewing permits for signs that are damaged, unsafe, or unsightly by reason of lack of maintenance or repair. Additionally, CDOT is proposing to delete citations referencing the Bonus Program.

2.3 Conditions that Prohibit CDOT from Issuing or Renewing a Permit [§ 43-1-411, and § 43-1-417(3)(a), C.R.S. ~~and 23 C.F.R. 750.108~~]

A. The Department is prohibited from issuing ~~or renewing~~ a Permit for any Advertising Device pursuant to § 43-1-411, C.R.S. ~~and 23 C.F.R. 750.108~~ if the Sign:

1. Does not conform to size, lighting, and spacing standards as prescribed by these Rules where the Rules were adopted prior to the erection of the Advertising Device;

2. Would encroach upon the right-of-way of a public highway absent prior written approval from the Department;

3. Is within 500 feet of the center point of an intersection of a Controlled Route at grade with another highway or with a railroad so as to materially obstruct or reduce the existing view of traffic on the other highway or railway trains approaching the intersection;

4. Is along a Controlled Route where it would reduce the existing view of traffic in either direction or of traffic control or official highway Signs to less than 500 feet;

5. Includes more than two advertising panels on an Advertising Device facing the same direction;

6. Required a ~~permit~~ Permit prior to July 1, 1981, and no ~~permit~~ Permit was obtained;

7. Simulates any official, directional, or warning Sign erected or maintained by the federal or state government or local governing body which involves light that simulates or resembles traffic signals or traffic control Signs;

8. Is nailed, tacked, posted, or attached in any manner on trees, plants, fence posts, public utility poles, rocks or other natural objects; or

9. Becomes decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly due to lack of maintenance or repair, or from any other cause, and no renewal for such Sign shall be issued for the same.

Rule 6.02

Rational for Proposed Changes: On-Premise signs are largely excepted from outdoor advertising control. However, state and federal law do not clearly define when a sign is considered an On-Premise sign. CDOT recommends revising Rule 6.02 in an effort to provide more clarity concerning when a sign is On-Premise rather than Off-Premise. The following changes are proposed:

- Deleting the Size and Lighting rules [Rule 6.02(A)(1) and (2)] that currently pertain to On-Premise signs because CDOT is not required to control On-Premise signs under state law or pursuant to its agreement on outdoor advertising with the United States Department of Transportation. Accordingly, the repeal of these requirements will reduce administrative burden, simplify the rules, and avoid risk of agency overreach.
- Revising Rule 6.02(D)(2) for clarification by defining “Principal activities,” “Accessory activities” and “Incidental activities.” These categories determine what is allowed on On-Premise signs under federal regulations, and the existing rules do not speak to these categories sufficiently. Examples are also provided to help show how this rule should be applied. An exception to this rule was also added for temporary events that are held on a property.
- Revising Rule 6.02(D)(3) to provide a content-neutral way to assess whether a sign is On-Premise or Off-Premise. This can be accomplished by determining if a sign brings in rental income, which amounts to: 1) the sign is being marketed as an advertising device; 2) the sign owner is receiving value for advertising; 3) the sign owner has contracts for the sign that concern outdoor advertising; and/or 4) the sign owner has contracts with a supplier that requires advertising. The intention of this proposed change is to determine whether a sign is truly advertising On-Premise, or whether a sign is now operating as an Off-Premise commercial advertising device.

6.02 On-Premise Signs

[23 U.S.C. 131(c) and (j); 23 C.F.R. 750.704(a); 23 C.F.R. 750.105, 23 C.F.R. 750.108, and 23 C.F.R. 750.709(d)]

A. ~~Authority. This section of the Rules pertains to On-Premise Signs located outside of 50 feet from the advertised or principal activity and Visible from the Main Travelled Way of the State Highway System.~~ On-Premise Signs are generally excepted from outdoor advertising permitting and control requirements. [§ 43-1-404(1)(b), C.R.S.; 23 C.F.R. 704]

~~1. Size~~

~~a. On-Premise Signs which are located outside of 50 feet from the advertised or principal activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)].~~

~~b. No Sign may attempt or appear to attempt to direct the movement of traffic or interfere with, imitate or resemble any official traffic sign, signal or device.~~

~~c. No Sign may prevent the driver of a vehicle from having a clear and unobstructed view of Official Signs and approaching or merging traffic.~~

~~d. No Sign may be erected or maintained upon trees or painted or drawn upon rocks or other natural features.~~

~~e. No On-Premise Sign may be erected in an area across a public or private roadway from the Property where the business is conducted unless the purpose of the public or private roadway is for the exclusive use of a Comprehensive Development.~~

~~2. Lighting~~

~~a. On-Premise Signs shall comply with the lighting requirements of § 43-1-404(1)(f)(I), C.R.S.; however, for purposes of spacing, On-Premise Signs shall not be counted within the 1,000 feet limitation for Off-Premise Signs.~~

~~b. No Sign may contain, include, or be illuminated by any flashing, intermittent or moving light or lights.~~

~~c. No lighting may be used in any way in connection with any Sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the Main-Traveled Way of the State Highway System or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.~~

~~d. No On-Premise Sign may move or have any animated or moving parts.~~

B. Requirements to Remain an Excepted On-Premise Sign. ~~An On-Premise Sign must be located upon the same Property as the activity advertised. An On-Premise Sign may:~~

~~1. Advertise the principal or primary activities, goods or services available upon the premises;~~

~~2. Identify the property upon which the Sign is located;~~

~~3. Advertise the property upon which the Sign is located for sale or lease;~~

~~4. When located within a Comprehensive Development, advertise activities conducted within the Comprehensive Development;~~

~~5. Direct the traveling public to the closest entrance to the premises located upon the property;~~

~~6. Include non-Commercial Advertising devices (ex. religious, social or political commentaries) erected by the owner or lessee of property.~~

1. An On-Premise Sign must be located upon the same Property as the activity advertised.

a. Where the Sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the Sign site shall not be considered part of the Premises on which the activity being advertised is conducted when the purpose is clearly to circumvent 23 U.S.C. 131. *See* 23 C.F.R. 750.709(3).

2. An On-Premise Sign may do any of the following without losing its exception:

a. Advertise the principal or primary activities, goods or services available upon the Premises;

b. Identify the Property upon which the Sign is located;

c. Advertise the Property upon which the Sign is located for sale or lease;

d. When located within a Comprehensive Development, advertise activities conducted within the Comprehensive Development;

e. Direct the traveling public to the closest entrance to the Premises located upon the Property; and

f. Include non-commercial Signs (ex. religious, social or political commentaries) erected by the owner or lessee of the Property

~~C. Where the Sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the Sign site shall not be considered part of the Premises on which the activity being advertised is conducted when the purpose is clearly to circumvent 23 U.S.C. 131(j). See 23 C.F.R. 750.709(3).~~

C.~~D~~. An On-Premise Sign does not include:

1. A Sign that advertises activities, goods, or services not available upon the ~~property~~Premises.

2. A Sign that consists principally of brand name or trade name advertising of a product or service which is only incidental to the principal activity conducted upon the ~~premises~~Premises.

a. "Principal activities" include the sale of goods or services which are either "principal or accessory," and not merely "incidental" to the primary business conducted on the Property. "Principal or accessory" products or services are those products or services that are directly related and important to the establishment being advertised or are closely associated with it.

i. "Principal" products or services available on a Property consists of the primary name and/or logo of the business that operates on the Property, as well as calls to action to transact business on the Property.

For example, a car dealership called, "Jeff Jake's Honda" could display the standard characters "Jeff Jake's Honda," the Honda logo, the Honda name, and a business's logo for "Jeff Jake's Honda," or any combination of the above, without obtaining a permit. It could also describe the primary activity of the Property by saying, for example, "Great Honda discounts!" or "Lease a new Honda today!"

ii. "Accessory" products or services are those products or services available on the Property that, while not the same as the business operator's primary brand name or trade name, comprise additional products which are directly related and important to the primary business conducted on the Property.

For example, “Jeff Jake’s Honda” could also display standard character marks or logos for accessory products of Honda that are sold on the premises, such as trade names of the models of cars sold on the Property, like “Civic” or “Accord.” Accessory products could also include images of the accessory products, as well as language announcing deals or prices. The products or services must be offered and generally available for purchase on the Property.

iii. “Incidental” products or services are those products or services that are supplementary to the principal and accessory products or services offered on the Property. They are products or services that are neither “principal” nor “accessory.” “Incidental” products or services are in the nature of convenience or are only marginally associated with the principal purpose of the establishment, if there is any association at all.

For example, without a permit Jeff Jake’s Honda could not display the brand name or trade name of a cola without a permit. Although Jeff Jake’s Honda may have a vending machine that sells cola on the Property, such sales are only in the nature of convenience and not associated with the principal purpose of Jeff Jake’s Honda.

iv. Event Holder Business Exception. Where a business’s primary activity involves the offering of limited time events on the Property, the display of trade or brand names of visiting companies, event names, sponsors, or performer, or advertising the sale of tickets to the same, is “accessory”; provided that the event occurs on the Property. Where a business merely displays the ability to purchase tickets on the Property for events, shows or performances held primarily off-premises, the sale of such tickets is “incidental.”

3. A Sign which brings in rental income to the ~~premise~~Premise/~~property~~ Property and /or Sign owner. [23 C.F.R. 750.709]

a. A Sign “brings in rental income” when the owner of the Property or the Sign, or their lessee, derives money or Value from advertising goods, services or commercial activities and such money or Value is independent of the profit derived from selling or providing such goods, services or activities on the Premises. The hallmark of a Sign that generates “rental income” is that the owner of the Property or Sign is no longer only in the business of operating the primary activities on their Premises, but is now in the business of outdoor advertising. A Sign does not “bring in rental income” where its sole intent is to bring customers to the Property or enhance sales of a particular product, service or activity from sales that occur on the Property. The following are clear indications a Sign “brings in rental income”:

i. The Property or Sign owner, or their lessee or agent, markets the Sign to third parties as a device that can be used to advertise products or services;

ii. The Property or Sign owner, or their lessee or agent, receives money or Value that derives from the act of advertising on the

Sign, and not merely from increased profits derived from displaying the availability of the activity, good or service on the Property;

iii. The Property or Sign owner, or their or agent, has one or more contracts concerning the Sign with third parties who are engaged in the business of outdoor advertising and such contracts concern outdoor advertising; or

iv. The Property or Sign owner, or their lessee or agent, have one or more contracts which contain provisions that suggests a substantial portion of the Value exchanged in the contract is for advertising, rather than profits from sales on the Property.

b. This "rental income" test is independent of the determination in Section 6.02(D)(1) and (2). A business display that generates rental income will still need a Permit.

c. The purpose of this "rental income" test is to control the proliferation of Advertising Devices in the Control Area due to the financial gain attainable through the operation of Signs.

d. "Value" includes, but is not limited to, the exchange of securities, real property interest, personal property interest, the barter of goods or services, the promise of future payment, or the forbearance or forgiveness of a debt. It does not include goodwill or the exchange of value that a landowner or lessee provides to a Sign company for the construction of a Sign.

~~i.~~e. Comprehensive Development Sign Exception. Comprehensive Developments may maintain a Sign that displays the principal business activities offered on businesses which are a part of the Comprehensive Development. The fact that any lease between a Comprehensive Development owner or manager and a lessee business agrees to display the principal business activities on a Sign owned by a Comprehensive Development, and, potentially, shared with other businesses on a static Sign or a CEVMS display, does not, in-and-of-itself, constitute a violation of the rental income test.

D. Other Provisions.

1. On-Premise Signs are not subject to regulation pursuant to § 43-1-404(1)(f)(I), C.R.S., and, thus, are not subject to the size, lighting and spacing requirements contained in that section.

2. Comprehensive development On-Premise Signs allowed.

a. On-Premise Signs for Comprehensive Developments shall adhere to the requirements of On-Premise Signs in Rule 6.02.

b. A Comprehensive Development includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas.

c. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising.

d. A Comprehensive Development is a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities and must meet all of the following requirements pursuant to § 43-1-403 (1.5)(a) and (b), C.R.S.:

i. Is located entirely on one side of a highway;

ii. Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;

iii. Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;

iv. Has common areas such as parking, amenities, and landscaping; and

v. Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.

3. Obsolescence of On-Premise Signs.

a. Upon the termination or cessation for one consecutive year of the activities, services or products advertised by an On-Premise Sign, the Sign advertising the activity shall no longer qualify as an On-Premise Sign and shall be deemed illegal and subject to removal by the Department at the expense of the Sign owner.

E. On-Premise Signs that Identify the Property upon which They Are Located.

1. An On-Premise Sign identifying the property upon which it is located shall contain only the:

a. Name of the property,

b. Type of property,

c. Logo, and/or

d. Name of the owner of the property.

2. Such Signs may also direct the traveling public to the closest entrance to the premises.

3. On-Premise Signs directing the travelling public to the closest entrance to the premises are limited to two Signs Visible to traffic proceeding in any one direction if the highway frontage of the property is less than one mile in length.

4. If the highway frontage of the property is more than one mile in length, one Sign Visible to traffic proceeding in any one direction per mile is allowed.

5. The purpose of such Signs shall not be to advertise specific goods or services available upon the premises.

~~F. On-Premise Signs that Advertise the Primary Activities, Goods or Services Conducted on the Premises which are located outside of 50 feet from the activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)]~~

~~G~~F. On-Premise Signs that Advertise the Sale or Lease of the Property upon which the Sign is Located.

1. An On-Premise Sign that advertises the sale or lease of the property may not contain any product or service other than the logo and/or name, type of real property, address, and contact information of the party offering the property for sale or lease.

2. Real property offered for sale or lease must only be for the uses of record for zoned or platted areas.

~~3. On-Premise Signs advertising the sale or lease of the property are limited to one Sign Visible to traffic proceeding in any one direction less than one mile apart.~~

~~4. On-Premise Signs advertising the sale or lease of the property may be no larger than 96 square feet including border and trim, but excluding supports.~~

~~5. Not more than one such Sign advertising the sale or lease of the same property may be allowed in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway. [23 C.F.R. 750. 105(a)].~~

~~H. On-Premise Signs – Non-Commercial.~~

~~1. Non-commercial Signs are limited to two Signs visible to traffic proceeding in any one direction if the highway frontage of the property upon which the premises is located is less than one mile in length.~~

~~2. If the highway frontage of the property upon which the premises is located is more than one mile in length, one non-commercial Sign visible to traffic proceeding in any one direction per mile is allowable.~~

~~I. A property owner who has an On-Premise Sign that was in existence upon the property on the effective date of these Rules and who could have reasonably believed such advertising device was on premise under prior rules shall be allowed one year from the effective date of the Rules to bring such advertising device into compliance with these Rules.~~

~~J. Measurement of On-Premise Signs~~

~~1. These Rules do not apply to On-Premise Signs located within 50 feet of the principal activity.~~

~~2. When the advertised activity is a business, is commercial, or concerns industrial land use, the 50-foot distance shall be measured from the regularly used~~

~~buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. The distance shall not be measured from driveways, fences, or similar facilities.~~

~~3. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the 50-foot distance shall be measured from the major structures on the Property.~~

~~4. A Sign that is located within 50 feet of the premises and advertises the primary activities, goods and services available upon the premises is an On-Premise Sign unless the land upon which the Sign is located is used for, or devoted to, a separate purpose unrelated to the principal activity advertised. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, residence, or farmstead uses or other commercial or industrial uses having no direct relationship to the service station activity is a separate purpose unrelated to the principal activity advertised.~~

~~K. Obsolescence of On-Premise Signs~~

~~1. Upon the termination or cessation for one consecutive year of the activities, services or products advertised by an On-Premise Sign, the Sign advertising the activity shall no longer qualify as an On-Premise Sign and shall be deemed illegal and subject to removal by the Department at the expense of the Sign owner.~~

~~L~~G. On-Premise Signs – Right-of-Way Encroachment

1. On-Premise Signs shall be allowed to extend over existing right-of-way and future rights-of-way of any State Highway if:

   a. The Sign is attached to and extends from a building and only advertises activities or services offered in that building;

   b. The building and attached Sign is adjacent to the State Highway within a city, city and county, or incorporated town having authority over the State Highway pursuant to § 43-2-135, C.R.S.;

   c. The Sign does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and

   d. Before erecting the Sign, the owner has obtained written permission from the city, city and county or incorporated town. [§ 43-1-421, C.R.S.]

2. No On-Premise Sign may encroach over an Interstate right-of-way nor any portion of an Interstate roadway.

~~M~~H. Comprehensive Development On-Premise Signs

1. On-Premise Signs for Comprehensive Developments shall adhere to the requirements of On-Premise Signs in Rule 6.02.

2. A Comprehensive Development includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas.

3. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising.

4. A Comprehensive Development is a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities and must meet all of the following requirements pursuant to § 43-1-403 (1.5)(a) and (b), C.R.S.:

   a. Is located entirely on one side of a highway;

   b. Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;

   c. Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;

   d. Has common areas such as parking, amenities, and landscaping; and

   e. Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.

Rule 7.00(D)(2)(b)

Rational for Proposed Changes: Rule 7.00(D)(2)(b) applies to interstates and freeways and generally precludes signs from being located within 500 feet of an interchange, intersection at-grade, or rest area. The rule derives from a 1971 agreement between CDOT and the United States Secretary of Transportation to set forth the State's size, spacing and lighting criteria. All states are subject to a similar agreement.

CDOT believes re-examination of Rule 7.00(D)(2)(b) is necessary in light of developments in highway design principles, developments in outdoor advertising laws and regulations, and to provide stakeholders with an opportunity to provide comment about the rule. CDOT believes changing or removing the rule would conserve department resources. To address these issues, and to recognize the concerns of various stakeholders, the following three options for change are being proposed:

OPTION 1: CLARIFICATION

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

2. In the Control Area near Interstates ~~Highways~~ and Freeways:

   a. No two Signs shall be spaced less than 500 feet apart.

   b. For Advertising Devices located outside ~~Outside~~ of incorporated villages and cities, no Advertising Device may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area. The 500 feet is to be measured along the Interstate or Freeway from the

beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

i. This spacing limitation applies where the proposed location of the Sign is located outside of an incorporated area, regardless as to whether the interchange, intersection at grade, or safety Rest Area is within or outside an incorporated area.

ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.

iii. The 500-foot measurement is to be measured parallel to the highway. All Advertising Devices that are within the Control Area and within the 500-foot measurement are precluded.

iv. "Pavement widening" includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.

v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade and connects to the exit ramp/lane of another interchange/intersection at grade, such that there is no clear "beginning or ending of pavement widening at the exit from or entrance to the main-traveled way," this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.

OPTION 2 – REVISION TO URBAN AREAS

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

2. Interstate Highways and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities~~For Advertising Devices located outside of Urban Areas, no Advertising Device may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urban Area, regardless as to whether the interchange, intersection at grade, or safety Rest Area is within or outside of an Urban Area.

ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.

iii. The 500-foot measurement is to be measured parallel to the highway. All Advertising Devices that are within the Control Area and within the 500-foot measurement are precluded.

iv. "Pavement widening" includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.

~~i.~~v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade and connects to the exit ramp/lane of another interchange/intersection at grade, such that there is no clear "beginning or ending of pavement widening at the exit from or entrance to the main-traveled way," this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.

3. All other Controlled Routes except Interstate and Freeways:

a. Outside of Urban Areas ~~incorporated villages and cities~~, no two Signs ~~structures~~ shall be spaced less than 300 feet apart.

b. Within Urban Areas~~incorporated villages and cities~~, no two Signs ~~structures~~ shall be spaced less than 100 feet apart.

OPTION 3 – REPEAL

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

2. Interstate Highways and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

~~b. Outside of incorporated villages and cities, no Advertising Device may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way~~.

Rule 13.00

Rationale for Proposed Change: A new administrative rule in regards to declaratory orders is being proposed to allow for petitions from the public to terminate controversies or to remove uncertainties of any statutory provision, rule, or order under the Outdoor Advertising program. This new rule concerning declaratory orders is necessary in order for conformity with section 24-4-105(11), C.R.S.

13.00 Declaratory Orders Concerning these Rules

A. Who May Request a Statement of Position. Any person as defined in section 24-4-102(12), C.R.S., may request the Outdoor Advertising Program (the "OA Program") issue a statement of position concerning the applicability to the petitioner of any provision of these Rules.

B. Department Response. The OA Program will determine, in its sound discretion, whether to respond with a written statement of position. Following receipt of a proper request, the OA Program will respond by issuing a written statement of position or by declining to issue such a statement.

C. Petition for Declaratory Order. Any person who has properly requested a statement of position, and who is dissatisfied with the OA Program's response, may petition the Department for a declaratory order pursuant to section 24-4-105(11), C.R.S. The petition shall be filed within 30 days of the OA Program's response, or may be filed at any time before the OA Program's response if the OA Program has not responded within 60 days of receiving a proper request for a statement of position, and shall set forth the following:

1. The name and address of the petitioner.

2. Whether the petitioner is a Permittee and what interest, if any, they have or would have in the applicable Advertising Device or proposed Advertising Device.

3. Whether the petitioner is involved in any pending administrative hearings or lawsuits with the OA Program, the Department, or the relevant local jurisdiction.

4. The statute, rule, or order to which the petition relates.

5. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.

6. A concise statement of the legal authorities, if any, and such other reasons upon which the petitioner relies.

7 A concise statement of the declaratory order sought by the petitioner.

D. The Department Retains Discretion Whether to Entertain Petition. The Department will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the Department decides it will not entertain a petition, it shall notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner failed to properly request a statement of position from the OA Program, or the petition for declaratory order was filed with the Department more than 30 days after the OA Program's response to the request for a statement of position.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.

3. The petition involves a subject, question or issue that is relevant to a pending hearing before the state or any local licensing authority, an on-going proceeding conducted by the Department, or relates to an issue or case which is currently the subject of litigation.

4. The petition seeks a ruling on a moot or hypothetical question.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.

E. The Department May Adopt the OA Program's Position Statement. The Department may adopt the OA Program's Position Statement as a Final Agency Action subject to judicial review pursuant to section 24-4-106, C.R.S.

F. If Department Entertains Petition. If the Department determines that it will entertain the petition for declaratory order, it shall so notify the petitioner within 30 days, and any of the following procedures may apply:

1. The Department may expedite the matter by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the OA Program to submit additional evidence and legal argument in writing.

2. In the event the Department determines that an evidentiary hearing is necessary to a ruling on the petition, a hearing shall be conducted in accordance with the State Administrative Procedure Act. The petitioner will be identified as Respondent. The Department may designate the Office of Administrative Courts as the place of hearing, and an Administrative Law Judge as the officer to preside over the hearing.

3. The parties to any proceeding pursuant to this rule shall be the petitioner/Respondent and the OA Program. Any other interested person may seek leave of the Department to intervene in the proceeding and such leave may be granted if the Department determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

4. The declaratory order shall constitute a Final Agency Order subject to judicial review pursuant to section 24-4-106, C.R.S.

G. Public Inspection. Files of all requests, petitions, statements of position, and declaratory orders will be maintained by the OA Program. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

H. Posted on Website. The OA Program shall post a copy of all final statements of position and declaratory orders on the OA Program's website.