
LDC19-002 Arapahoe County Land Development Code – Billboards and Off-Premise Signs

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This county-initiated application to amend the Land Development Code would include new language and requirements that amend the provision for billboards and other off-premise signs in Unincorporated Arapahoe County, including the conversion of any existing billboard or other off-premise sign to an Electronic Message Center (EMC). Please note the industry uses the term EMC, which equates to Electronic Message Board (EMB) in our regulations.

Request and Recommendation

Staff and the Board of County Commissioners (BOCC) recommends developing regulations that will prohibit any new billboards and conversion of any existing static billboard to an EMC in unincorporated Arapahoe County. Staff also recommends removing the existing provision in the Land Development Code that would allow other off-premise signs, not billboards by reason of size. The draft regulations will also eliminate the Use by Special Review (USR) approval requirement for such signs. Staff researched 20 jurisdictions' billboard regulations, received input from industry representatives and Colorado Department of Transportation (CDOT), held nine study sessions with the Board of County Commissioner, held one study session with the Planning Commission and has developed draft regulations (attached to this report). Staff sent the draft regulations out for external referral on November 20, 2020 and expects to receive input from external referrals no later than December 21, 2020. The external referral comments received prior to November 30, 2020 will be summarized and sent to the Planning Commission via email, by November 30, 2020. Staff requests a recommendation of approval from the Planning Commissioners on these draft regulations.

Background

A number of developers and industry representatives have contacted the Planning Division over the last few years to express the desire to construct new billboards, to convert existing billboards to electronic message boards (EMBs), and to reduce the dwell time for EMBs. A new billboard has not been constructed in unincorporated Arapahoe County in at least 15 years, and there are no Use by Special Review approvals on file for the existing billboards (current regulations require a USR for placement of a billboard). However, there is an important need to amend the existing Sign Code and the approval process set forth therein for billboards and other off-premise signs. The First Amendment strictly limits the County's ability to regulate signs as a matter of free speech and the County Attorney's office has expressed concern over the constitutionality of the existing USR process.

Pursuant to Resolution No. 190273, the Board of County Commissioners approved a 6-month temporary moratorium on May 7, 2019, on the acceptance and processing of applications for any new billboard or other off-premise sign and on applications for conversion of any existing billboard

or other off-premise sign to an electronic messaging sign. Prior to the moratorium adoption, Arapahoe County received applications for two billboards: one proposed at Bellevue and I-25 and the other proposed at Hampden Avenue/Highway 285 and Knox Court. Staff continues processing those applications and the County is awaiting responses to the most recent review comments. This temporary moratorium was extended to February 7, 2020, and further extended to May 7, 2020, September 7, 2020, and to January 7, 2021. The Board of County Commissioners are scheduled to make decision on the draft regulations on January 5, 2021.

Summary of BOCC and Planning Commission Study Sessions and Public Hearings

Since the temporary moratorium was approved and extended multiple times, staff has discussed this with the following Divisions and agencies: Arapahoe County Planning, Arapahoe County Zoning, Colorado Department of Transportation (CDOT) and billboard industry representatives. Staff has compiled and presented research regarding other jurisdictions' regulations and safety of electronic billboards and EMB. The history of the study sessions on the planned billboard and sign code amendments and the moratorium and public hearings, to date, are as follows:

July 29, 2019 BOCC Study Session

Anthony Lovato, CDOT, Outdoor Advertising Program Manager, presented CDOT's regulations to the BOCC. The BOCC asked staff to provide research regarding billboards and safety impacts.

September 10, 2019 BOCC Study Session

Staff presented research regarding billboards and safety impacts. The research on this topic is inconclusive due to the complexity of studying driver distraction. No billboard, road or driver is the same as another. The BOCC directed staff to provide draft language that permits new billboards and conversion of billboards with an approved Use by Special Review and a tentative schedule for review and consideration through a public hearing. The BOCC directed staff to draft language to prohibit billboards along certain travel corridors as part of an updated code for consideration through the hearing process.

October 22, 2019 BOCC Study Session

Staff presented draft USR and Billboard language and a tentative schedule. Commissioners requested staff to compile a list of referrals. The draft referral list was included in the October 29th public hearing packet.

October 29, 2019 BOCC Public Hearing

Staff requested the BOCC to extend the moratorium for three months to allow for staff to continue work on draft regulations and review legal and constitutional requirements for using codes. The BOCC approved a three-month moratorium, which expired February 7, 2020.

February 4, 2020 BOCC Public Hearing

The BOCC approved a three-month extension of the temporary moratorium to May 7, 2020.

April 14, 2020 BOCC Study Session

Staff proposed to the BOCC draft regulations that would establish Billboard Overlay Districts, which would identify potential areas in which billboards would be permitted within Arapahoe County. The BOCC asked staff to remove the Billboard Overlay Districts from the urban areas, which would mean no static to EMC conversions and no new billboards in those areas. Existing billboards would become non-conforming uses that could not be replaced or improved beyond routine maintenance. The BOCC expressed some support for maintaining the proposed Billboard Overlay District in the rural areas of the County and asked staff to look further into that option.

May 5, 2020 BOCC Public Hearing

The BOCC approved a four-month extension of the temporary moratorium to September 7, 2020.

June 2, 2020 BOCC Study Session

Staff proposed to and discussed with the BOCC three potential Billboard Overlay Districts in the non-urban area of the County. Staff also asked the BOCC to discuss appropriate spacing for billboards in the non-urban area. The BOCC directed staff to develop rules that could allow billboards in commercial, industrial, and agricultural zone districts in the rural Billboard Overlay Districts. Staff was directed to survey property owners along the three proposed Billboard Overlay District corridors in the rural areas, since adding billboards to agricultural zone districts represented an expansion of where billboards could potentially be located.

August 31, 2020 BOCC Study Session

Staff presented data from a survey sent to property owners within 600 feet of three proposed billboard overlay corridors, specifically, I-70, east of Watkins Road, East Quincy Avenue, east of Gun Club Road, and along Kiowa Bennett Road. More than two thirds (79%) of the survey respondents opposed allowing new billboards along all three proposed billboard overlay zones in the A-1 and A-E zone districts. Additionally, more than half (64%) of the respondents supported a county-wide prohibition on new billboards. The survey results are attached this report for reference. The BoCC directed staff to draft regulations prohibiting new billboards county-wide and to prohibit conversion of existing billboards to EMCs.

September 1, 2020 BOCC Public Hearing

The BOCC approved a four-month extension of the temporary moratorium to January 7, 2021.

October 6, 2020 Planning Commission Study Session

Staff presented an overview of the draft regulations to the Planning Commissioners for input. The Planning Commission requested clarification regarding the survey staff sent out to residents along three proposed billboard corridors and whether or not existing billboards will be able to be converted to EMBs under the draft regulations. Staff clarified that the proposed regulations will not allow existing billboards to be converted to EMBs. The Planning Commission requested additional information regarding first amendment restrictions. Staff summarized recent court case rulings and why staff has proposed changes that are intended to further comply with first amendment rights and avoid content regulation of signs. The Planning Commission also discussed the referral process, vehicular signs and business interests with staff.

October 19, 2020 BOCC Study Session

Staff provided the Commissioners with an update of the draft regulations and the process. Staff presented the information discussed with the Planning Commission and the proposed schedule moving forward. Commissioners requested clarification of the scope of the changes and previous billboard study sessions with the Board of County Commissioners. The Commissioners also asked for more information regarding CDOT's rules.

Discussion and Recommended Regulations

Staff has prepared draft regulations which will prohibit any new billboards in unincorporated Arapahoe County. The draft regulations will also prohibit billboards proposed on land zoned or to be zoned for Planned Unit Developments. The proposed regulations will define what a Billboard is by the size of the sign and its proposed location relative to roads and highways without reference to the content of the sign as required under developing court precedent. This is intended to remove the existing off/on premise based definitions in the Land Development

Code in their entirety. The draft regulations define billboards as any sign exceeding 48 square feet per sign face or a sign exceeding six feet in height and that is oriented towards a public road with an intent to advertise to travelers on such road.

If the draft regulations are approved, the regulations will:

- Prohibit new billboards
- Prohibit establishing billboards through a PUD process
- Prohibit conversion of existing billboards to EMCs
- Continue to recognize existing billboards as nonconforming, subject to nonconforming provisions of the code (maintenance)
- Clarify that freestanding signs under 48 square feet are not billboards
- Provide limitations of some freestanding signs to 48 square feet
- Prohibit freestanding signs are the primary use of any property
- Reduce the dwell time for EMCs from five minutes to one minute
- Add definitions for interior sign, electronic message board, permanent freestanding sign, and structure, sign
- Revise definitions for sign, billboards, flashing signs and temporary signs

The draft regulations are attached to this report. Staff sent the draft regulations out for external referral on November 20, 2020 and will provide the Planning Commissioners with a summary of the comments received by November 30, 2020.

Fiscal Impact

The proposed draft regulations should not result in any fiscal impact on the County.

Attachments

- Draft Regulations Clean Version
- Draft Regulations with Tracked Changes