



**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
PLANNING AND ZONING BOARD MEETING**

**November 14, 2023
6:00 PM**

AGENDA

1. CALL TO ORDER

- A. AGENDA ADOPTION
- B. SPECIAL PRESENTATIONS
- C. PUBLIC COMMENT - Anyone wishing to address the Board may do so during the Public Comment section. Please state your name and address for the record, be courteous and do not repeat what has already been said. Please keep your comments about the subject and not personal in nature.
- D. PUBLIC PARTICIPATION VIA ZOOM

Harrisburg Town Hall's Council Chambers will be open for the public to attend the meeting in person.

The public has the option to join the meeting virtually via the Zoom platform using the following link:
Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://us02web.zoom.us/j/82922934233?pwd=UUVIbHlWeng1YStOUUVmVWdtZXllQT09>

Passcode: 249745

Or join by phone:

312.626.6799

301.715.8592

Or One tap mobile:

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2. CONSENT AGENDA

- A. Minutes from the October 17, 2023 meeting

3. OLD BUSINESS

- A. H-2023-04 TA: UDO text amendment of Sections 140.04.07 and 140.04.08 associated with Food Trucks and other Temporary Uses

4. NEW BUSINESS

- A. Training - Billboard Regulations

5. STAFF UPDATES/INFORMATION

6. ADJOURNMENT

Vision Statement

Harrisburg will be a distinctive, family-focused community where memories are made.

Mission Statement

Together, we enhance our quality of life by collaborating, planning, and investing to create our community of choice.



TOWN OF HARRISBURG

Agenda Item Details

Title:

Minutes from the October 17, 2023 meeting

Presenting Personnel:

Zachary Gordon, Planning Director

Suggested Motion or Action:

Motion to approve minutes from the October 17, 2023 meeting.

Description/Background:

October 17, 2023 Planning and Zoning Board minutes attached.

Recommendation:

Staff recommends approval of October 17, 2023 minutes, as presented.

Fiscal Impact:

Noine

Attachments:

1. PZ MINS OCT 17 2023

**TOWN OF HARRISBURG, NORTH CAROLINA
PLANNING & ZONING BOARD MEETING
TUESDAY, OCTOBER 17, 2023
6:00 PM**

MINUTES

1. CALL TO ORDER

Kevin Schaffner called the meeting to order.

PRESENT: Kevin Schaffner, Kevin Hutchins, Monica Long, Bill Leake, Faith Silva, Jessica Fava, Keziah Hubler (ex officio)

STAFF: Zac Gordon, Planning Director, Shelley DeHart, Assistant Planning Director, Carly Bedgood, Planning Technician

ABSENT: Craig Thomas, Senior Planner

A. AGENDA ADOPTION

Kevin Hutchins made a motion to adopt the agenda as presented. The second was made by Monica Long.

The motion passed 6-0.

B. SPECIAL PRESENTATIONS

C. PUBLIC COMMENT

None

2. CONSENT AGENDA

A. Consider adoption of minutes from the August 15th, 2023, Planning and Zoning Board meeting.

Board member Long mentioned a clerical error on page 4, Section B. States the Board meets every Third Thursday and should state every Third Tuesday.

MOTION: Monica Long made a motion to approve with correction, the second was made by Kevin Hutchins. **The motion passed 6-0.**

3. OLD BUSINESS – None

4. NEW BUSIENSS

A. H-2023-03-TA UDO Text amendment expanding the separation requirement for Tobacco Stores, Vapor Shops, Electronic Gaming Establishments, and the retail sale of CBD and hemp-based products.

Zac Gordon presented the text amendment proposing to expand the separation requirements related to Tobacco Stores or Vapor Shops, the retail sale of CBD and Hemp-Based Products, as well as Electronic Gaming activities from 1,500 to 2,000 linear feet, which is consistent with the separation

**TOWN OF HARRISBURG, NORTH CAROLINA
PLANNING & ZONING ADVISORY BOARD MEETING MINUTES**

requirement for "adult uses". These separation requirements would apply between these subject uses, as well as certain other uses (i.e., residentially used properties, religious institutions, schools, public parks, and categories of day care use). Mr. Gordon indicated staff recommended approval as presented and that the Board make a finding that the amendment is consistent with the HALUP.

The Board discussed the proposed amendment and how this amendment might affect existing subject businesses. It was explained that the amendment would not apply to existing approved businesses, only future ones. Kevin Schaffner requested that the ordinance be clarified to ensure that the separation requirements would also apply to each other.

MOTION: Kevin Hutchins made a motion to approve H-2023-03-TA and recommend approval to the Town Council, with a second from Monica Long. **The motion passed unanimously 6-0.**

The following **Consistency Statement** was presented to the Board for its consideration:

Based on the staff report and staff presentation, the proposed text amendment is consistent with sections 145.01.07 and 145.03.01 of the UDO and the Harrisburg Area Land Use Plan, and it is reasonable and in the public interest.

MOTION:

Monica Long made a motion to approve the proposed **Consistency Statement** with a second from Jessica Fava. **The motion passed 6-0.**

B. H-2023-04-TA: UDO text amendment of Sections 140.04.07 and 140.04.08 associated with Food Trucks and other Temporary Uses.

Shelley DeHart presented the text amendment to Sections 140.04.07 and 140.04.08 of the UDO, codifying changes associated with Food Truck and other Temporary Uses. Ms. DeHart noted that the food truck community has grown significantly in the past several years and that with any new trend or growth in a particular use there can be both concerns and opportunities to our community. The current UDO references a Food Truck Court, which staff has recommended be removed from the Ordinance. In these sections on the table of uses, there are some inconsistencies and bad cross references to sections that do not apply, which staff is proposing be clarified and corrected where necessary. Staff has also added a sidewalk vendor definition and removed the ability for such uses in a GC zoning district on a public sidewalk. Sidewalk vendors will be allowed only for a Town special event or as granted permission by the Town. Ms. DeHart noted that the portable on-site storage section currently lacks clarity for implementation and that staff is recommending changes to address this deficiency. There will now be a maximum size, placement location and a temporary use permit needed. The staff's recommendation was to approve the text amendment as presented and that the Board make a finding that the amendment is consistent with the HALUP.

The board discussed the amendment in length recommending that the draft ordinance be modified reflecting the following:

140.04.07.B Portable On-Site Storage:

- Permit Required: Temporary Use Permit shall be required for portable on-site storage use operating beyond a 14-day permit.

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PLANNING & ZONING ADVISORY BOARD MEETING MINUTES**

- Duration: A temporary use permit time extension request may be considered for approval by the Planning Director for special circumstances.
- Exemptions: Clarify exemption with a valid building permit at the end of this statement.

140.04.08.A Table for Permitted Temporary Uses:

- Modify the table under sidewalk vendor identifying permitted in each zone in compliance draft criteria related to operating only in conjunction of a Town sponsored or recognized event or as granted by permission of the Town.

140.04.08.B Food Trucks:

- Food Truck: Consider allowing on vacant properties.
- Consider including environmentally friendly mechanical equipment such as generators.

Bill Leake suggested that the discussion of this text amendment continue at the next meeting and that no recommendation be made to the Town Council at this time. Jessica Fava stated she would like to see these changes that were discussed before we voted to approve.

MOTION: Bill Leake made a motion to continue item to the following meeting allowing staff time to incorporate changes prior to transmitting a recommendation to Town Council. The motion received a second from Jessica Fava. **The motion passed 5-1 (Monica Long voting against).**

5. STAFF UPDATES/INFORMATION

- The next meeting date is November 14th due to the holiday schedule.
- Staff will be working on some training sessions for the Board members.
- The Strategic Economic Development Plan planning process has begun, with the consultants conducting background research and analysis. If any member of the Board is interested in participating, please send that over to Zac by the 1st of the year.
- Farmington development is continuing to build out, with the addition of residential units and new commercial business.
- Single family homes are booming, the numbers have almost doubled from last year.

6. ADJOURNMENT

MOTION: There being no further business, Kevin Hutchins made a motion to adjourn, with a second from Monica Long. **The motion passed 6-0.**

Adopted on the 14th of November 2023

Kevin Schaffner, Chairman

Carly Bedgood, Secretary



TOWN OF HARRISBURG

Agenda Item Details

Title:

H-2023-04 TA: UDO text amendment of Sections 140.04.07 and 140.04.08 associated with Food Trucks and other Temporary Uses

Presenting Personnel:

Shelley DeHart, Assistant Planning Director

Suggested Motion or Action:

For approval of recommendation to Town Council, the following motion is suggested:

Motion to recommend approval of Text Amendment H-2023-04-TA to Town Council, as presented by staff, amending Sections 140.04.07 and 140.04.08 of the UDO to establish and enhance regulations associated with Food Trucks, Portable On-Site Storage, and Sidewalk Vendors, and to adopt the following Consistency Statement:

Motion to recommend approval the following Consistency Statement for Text Amendment H-2023-04-TA to Town Council:

The Planning and Zoning Board finds this text amendment is consistent with the applicable Common Decision Criteria found within Section 145.01.07 and 2145.03.01 of the UDO and the HALUP because:

- a. It establishes and/or enhances performance standards associated with mobile food vending, and other temporary uses found within these sections, to reflect our community's vision for quality and reduce the potential for adverse impacts.
- b. It promotes goals of the Harrisburg Area Land Use Plan (HALUP) in the area of fostering economic development by supporting incubation and growth of entrepreneurial/ start-up businesses, encourages a mixture of land-uses, and establishes performance standards to protect the community's vision.

For denial, the following motion is suggested:

Motion to deny a recommendation to Town Council for Text Amendment H-2023-04-TA, as presented by staff, amending Sections 140.04.07 and 140.04.08 of the UDO to establish and enhance regulations associated with Food Trucks, Portable On-Site Storage, and Sidewalk Vendors.

Description/Background:

The Planning and Zoning Board heard this text amendment at its October 17, 2023 public meeting. After receiving the staff report and deliberating, the Board requested the following amendments to the draft ordinance and voted to continue consideration of the proposed Text Amendment until the November 14, 2023 meeting:

Proposed Planning and Zoning Board amendments to H-2023-04-TA:

Portable on-site storage

- Allow a 14-day grace period prior to having to obtain a temporary use permit for a portable storage container; and
- Allow the ability to apply and obtain approval for a time extension beyond the 90-days per calendar year.
- Clarify exemption with a valid building permit.

Temporary Use Table

- identify the ability to obtain a Temporary Use Permit (TUP) for vendors in all zoning districts if in compliance with 140.04.08 B(2)(c)

Food Trucks

- Allow flexibility for Mobile Food Vending on vacant properties based on location, safety, and parking availability. This flexibility would require a Special Use Permit.
- Encourage the use of solar generators within the town.

These modifications listed above were added to the draft ordinance presented to the Board on October 17, 2023 that also included the following:

- Established a definition for Food Trucks and Mobile Food Vending.
- Removed the ability to have a "food truck court" by right as an accessory use. There still is the possibility of more than one food truck on a site at a time, as a temporary use and approved by Special Use Permit.
- The maximum consecutive days on a site is three days with a minimum of a 30-day period between permits on the same site. Flexibility is offered for businesses that may need more consecutive days and increased frequency between permits by obtaining a Special Use Permit.

Performance standards were added in the area of:

- Noise
- Placement and Removal
- Waste discharging
- Hours of operation
- Compliance with other state, local, county regulations, including food and beverage tax regulations.

While reviewing and modifying the Sections 140.04.07 and 140.04.08 of the UDO, staff noted the following sections needed amendment:

1. Portable storage containers - this section as written, lacks clarity for implementation. Enhancement of this section includes:
 - Clear definition for these containers.
 - Maximum size of containers.
 - Location options
2. Sidewalk vendors- This section would have allowed sidewalk vendors as a temporary use on public sidewalks within the General Commercial zoning classification. This section is proposed to be amended by adding:
 - A clear definition.
 - Only allowing the use to be conducted in conjunction with a town-sponsored or recognized event; or as otherwise granted by permission of the Town.
3. Correction of various cross-references.

*** For further detail, refer to the attached staff report and draft language for the proposed text amendment**

Recommendation:

Staff recommends approval of:

Motion to recommend to Town Council:

1. Approve as Presented; and
2. Find this text amendment is consistent with the applicable Common Decision Criteria found within Section 145.01.07 and 145.03.01 of the UDO and the HALUP because:
 - a. It establishes and/or enhances performance standards associated with mobile food vending, and other temporary uses found within these sections, to reflect our community's vision for quality and reduce the potential for adverse impacts.
 - b. It promotes goals of the Harrisburg Area Land Use Plan (HALUP) in the area of fostering economic development by supporting incubation and growth of entrepreneurial/ start-up businesses, encourages a mixture of land-uses, and establishes performance standards to protect the community's vision.

Fiscal Impact:

None

Attachments:

1. H-2023-04-TA _11_14_ Staff Report to PB
2. H-2023-04-TA _Amended Draft Ordinance



Town of Harrisburg
Planning and Zoning Department
Staff Report – Planning and Zoning Board
Text Amendment H-2023-04-TA

DATE: November 14, 2023

SUBJECT:

H-2023-04-TA: UDO text amendment to modify Sections 140.04.07 and 140.04.08
Associated with Food Trucks and other Temporary Uses.

Applicant: Staff Text Amendment

Staff Report Prepared by: Shelley DeHart, Assistant Planning Director

Neighborhood Meeting: N/A

BACKGROUND:

The subject amendment was presented to the Board at its October 17, 2023, public meeting. After a lengthy discussion, the Board requested this item be continued to tonight's meeting to allow staff time to incorporate requested modifications. The specific modifications are outlined below and highlighted.

REQUESTED MODIFICATIONS:

- **140.04.07.B (5) Portable On-Site Storage.** This modifications included:
 - Allowing a 14-day grace period before a temporary use permit is required. This still maintains that compliance is still required during the grace period.
 - Relocated the exemption criteria towards the end of this subsection and specified this exemption only is valid if operating under a valid building permit.
 - Offer the ability to request a time extension beyond the 90 days allowed.

Portable storage containers may be permitted as a use accessory to residential use in all zoning districts, subject to the following conditions:

- a. Permit Required. A Temporary Use Permit shall be required for portable on-site storage use operating beyond a 14-day period and shall be issued in accordance with Section 145.02.10 of this document.

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- b. Maximum Number, Size and Types. A maximum of two portable storage containers shall be located on a single lot limited in size to no larger than eight feet in height, eight feet in width, and 20 feet in length, and shall take on of the following three forms:
 - i. A container used for the purposes of storage of personal property such as household items being temporarily stored or relocated.
 - ii. A roll-off box, bin, or construction dumpster used for the collection and hauling of waste or debris; or
 - iii. A fully enclosed, non-motorized, trailer (commonly known as a semi-trailer) with wheels intended to be towed to a site for the purpose of storage or transport of goods, material, or equipment.
 - c. Location.
 - i. A portable storage container may be located in a driveway, a designated parking area, or behind a dwelling. If site conditions make placement of the portable storage container within these areas, then the container may be located immediately adjacent to the driveway or designated parking area.
 - ii. A portable storage container shall be located a minimum of five feet from any principal or accessory structure.
 - iii. In no instance shall a portable storage container be located within a Town street, public street right-of-way, or location that poses a threat to public health or safety.
 - d. Duration. A portable storage container may be located on a site for a maximum of up to 90 days per calendar year. **A temporary use permit time extension request may be considered for approval by the Planning Director for special circumstances.**
 - e. Exemptions. The standards in this section shall not apply to portable storage containers used as temporary construction trailers, dumpsters, or recycling facilities, provided ~~construction on the site is on-going under a~~ **valid building permit has been issued for this activity.**
 - f. Homeowners Association Restrictions: These regulations do not supersede any private codes, covenants, or restrictions that a property is legally subject to.
- **140.04.08.A Table for Permitted Temporary Uses and Structures** is proposed to be amended as follows:
 - Modified the sidewalk vendor to allow in compliance with 140.04.08 B (2)(c). This section only allows if conjunction with a Town sponsored or recognized event; or
 - As granted by permission of the Town.

Table 140.04.08.A, Permitted Temporary Uses and Structures													
TP = Temporary Permitted Use TS = Temporary Special Use -- = Prohibited Use Maximum Events per Year / Days per Event (Duration Column)													
Temporary Use	Duration	Zoning Districts											
		Homestead and Residential					Non-Residential and Mixed-Use						
		AG	RE	RL	RM	RH	MU	CC	O-I	NC	GC	CD, EC	
Amusement Enterprises	1 / 21	--	--	--	--	--	--	--	TP	--	TP	TP	
Commercial Outdoor Sales Event	4 / 7	--	--	--	--	--	TP	TP	--	--	TP	--	
Contractors' Office (Temporary)	See 140.04.07.B 140.04.08.B	TS TP	TS TP	TS TP	TS TP	TS TP	TS TP	TS TP	TP	TS TP	TP	TP	
Fireworks Stand	1 / 45	TP	--	--	--	--	--	--	TP	TP	TP	TP	
Food Truck	365 / 4 3 See 140.04.08.B	--	--	--	--	--	TP	TP	TP	TP	TP	TP	
Outdoor Circus, Carnival, Exhibition, or Show	1 / 30	--	--	--	--	--	--	--	--	--	TS	TS	
Real Estate Office in a Construction Trailer or Temporary Modular Unit	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	
Real Estate Office in a Model Home	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	TP	TP	--	--	--	--	
Religious Event	1 / 60	TP	--	--	--	--	--	TP	TP	TP	TP	TP	
Seasonal Sale of Agricultural Products	4 / 30	TP	--	--	--	--	--	--	--	--	TP	TP	
Sidewalk Vendor	3 / 45 140.04.08B (2)(c)	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	--
Single Family Dwelling in Temporary Structure	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	
Temporary Residence in Mobile Home During Construction of New Home	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	--	--	--	--	--	--	

- 140.04.08.B Food Trucks.** This section was discussed in length. A few questions raised required additional vetting.
 - Why not on vacant land?** This criterion was originally identified to ensure:
 - Necessary infrastructure was in place for safe parking, access, and operations of a lot; and
 - To protect the enhanced appearance along the town's transportation corridors.
 - A follow-up statement was why not in the Town Center, there could be some good locations. Staff agrees that if in the right location, such as the Town Center, it could spur additional excitement attracting new visitors to the area. Staff has

prepared the following amendment to the proposed food truck section for board consideration.

- Another recommendation received was to consider clean/environmentally sensitive equipment for Food Trucks. Generators for food trucks operate with gas, diesel, propane, inverter and solar. The solar generator is a clean energy system that eliminates noise and fumes. Because of the wide range in generator types and cost, staff is recommending we encourage the use of solar generator versus require the use.

6. **Food Truck.** A food truck is defined as a food service establishment on a motor vehicle or on a trailer that a motor vehicle pulls to transport, from which a vendor standing within the frame, sells food and/or drink processed or prepared on-site to walk-up customers. **MOBILE FOOD VENDING.** Commercial food service sales conducted through use of a food truck.

- a. **Permitting.** A Temporary Use Permit (TUP) may be issued in compliance with review criteria found in 140.04.08.A and the following:

- i. **Mobile food vending is prohibited on vacant properties, unless authorized through a Special Use Permit. Criteria for consideration should include:**

- 1. **Location – Town Activity Center**
 - 2. **Safety – can the site be accessed by emergency services and patrons safely.**
 - 3. **Parking Availability**

- ii. **Placement of food trucks shall be limited:**

- 1. **Paved areas, outside of fire lanes, landscaped and/or buffer areas.**
 - 2. **A minimum separation of 100 feet from the front door of an existing business, or restaurant, not affiliated with the mobile food service shall be required.**

- iii. **Hours of operation shall be limited to between 8:00 a.m. and 10:00 p.m. Food trucks, trailers, or other associated equipment may not remain after hours upon the premises unless registered to participate in a special event recognized by the town or owned and operated on the premises of an existing restaurant.**

- iv. **Service is limited to walk-up service (no drive-through).**

- v. **Mobile food vending shall be prohibited from discharging fat, oil, grease, or wastewater into the sanitary sewer system. Waste shall be properly stored and disposed of at a properly designated location.**

- vi. **The noise level from the food truck motor and/or generator must comply with the town's noise ordinance. The use of solar generators in conjunction with Food Trucks operated within the Town is encouraged.**

- vii. **Vendors shall comply with all local, county, and state regulations, licensing, registrations, and permitting, including sales tax regulations.**

- b. **Duration.** A temporary use permit may be issued to a food truck vendor to operate for:
 - i. A maximum of three consecutive days on any site or parcel.
 - ii. The minimum time between temporary use permits on the same site or parcel shall be limited to a 30-day period.
 - iii. Flexibility in duration requirements noted above may be considered and approved by Special Use Permit.
- c. **Public Property.** Food trucks may not be operated on public property such as parks or plazas, parking lots, public street rights-of-way, or public sidewalk except as specifically authorized by the Town and/or as part of an official public event sponsored or co-sponsored by the Town.
- d. **Other Zoning Districts.** In all zoning districts other than those listed in Table 140.04.08. A, listed above, food trucks may be allowed without a permit:
 - i. On commonly owned property within a residential development serving residents and guests at a neighborhood activity or function; and
 - ii. Sites undergoing construction in accordance with a valid development plan and permits. Such trucks may vend to persons lawfully authorized to be on the construction site and not to the general public.

In summary, the regulations provided in this text amendment should be viewed as a conservative approach to the use of Food Trucks in our community. Flexibility is provided in the form of requiring a Special Use permit (SUP). We would expect that request for SUP would be related to businesses that depend on a symbiotic business relationship for its business. This permit is location specific and could authorize Food Trucks to:

- Operate more frequently on the same site.
- Operate for a longer duration than three consecutive days on the same site.
- Provide opportunity for more than one-truck on a site (such as a food truck court).
- Provide opportunity to operate on a vacant lot.

RECOMENDATION

Staff believes that this text amendment is consistent with the applicable Common Decision Criteria found within Section 145.01.07 and 145.03.01 of the UDO because:

1. It establishes and/or enhances performance standards associated with mobile food vending, and other temporary uses found within these sections, to reflect our community's vision for quality and reduce the potential for adverse impacts.
2. It promotes goals of the Harrisburg Area Land Use Plan (HALUP) in the area of fostering economic development by supporting incubation and growth of entrepreneurial/ start-up

businesses, encourages a mixture of land-uses, and establishes performance standards to protect the community's vision.

Therefore, staff recommends the Board support this text amendment by recommending approval to the Town Council.

P & Z Action:

1. Motion to recommend approval, approval with modifications, or disapproval to the Town Council; and
2. Motion to approve or disapprove the required findings as presented or modified.

9. **Outside Storage.** No outside storage shall be permitted except the storage of recreational vehicles per Paragraph 12, *Vehicular Storage*, below.
10. **Accessibility.**
 - a. **Ingress/Egress.** Vehicular ingress/egress shall provide for safe access by customers and emergency vehicles.
 - b. **Interior Travel Lanes.** Interior travel lanes shall have a minimum width of 12 feet for one-way and 24 feet for two-way travel lanes. The minimum travel lane width for fire and life safety access shall be 20 feet.
11. **Off-Street Parking Standards.** Parking shall be provided by parking/driving lanes adjacent to the manager's office.
12. **Vehicular Storage.** Required parking spaces shall not be rented as, or used for, vehicular storage. However, additional parking area may be provided for recreational vehicle storage.
13. **Accessory Uses.** Sales of customary equipment and supplies, such as hand trucks, straps, tapes, packaging materials, boxes, etc. are permitted through the main office only.

140.04.07 Accessory Use and Structure Standards

140.04.07.A General Provisions

1. **Generally.** Permitted accessory uses and structures are set forth in Table 140.04.07.A-1, *Permitted Accessory Uses and Structures*, below. If a Primary use is listed as prohibited in a zoning district but is permitted as an Accessory Use, the use is permitted only as an accessory use to a principal use or principal building on the same property.
2. **Permitted Accessory Uses.** The uses listed in Table 140.04.07.A, below, shall be permitted by right (unless noted otherwise) in any of the listed zoning districts.

Table 140.04.07.A, Permitted Accessory Uses and Structures	
Accessory Use	Zoning Districts
Accessory Dwelling Unit	Permitted by Right Subject to Limitations in Subsection 140.04.07.B, <i>Standards</i> , according to Table 140.02.01-2, <i>Permitted Uses by Residential Zoning District and Development Type</i>
Agricultural Structure	Permitted by Right Subject to Limitations in Subsection 140.04.07.B in AG, RE, RL
Family Care Home or Family Child Care Home	Permitted by Right in All Residential Zoning Districts Special Use in CC, O-I, and NC
Garage or Carport (noncommercial)	Permitted by Right in All Zoning Districts
Greenhouse (noncommercial)	Permitted by Right in All Residential Zoning Districts
Home Occupation	Permitted by Right Subject to Limitations in Subsection 140.04.07.B in All Residential Zoning Districts
Off-Street Parking and Driveway	All Zoning Districts
Portable On-Site Storage	Permitted by Right Subject to Limitations in Subsection 140.04.07.B in All Zoning Districts
Recycling Facilities and Drop Off Sites	Permitted by Right Subject to Limitations in Subsection 140.04.07.B in All Zoning Districts
Satellite Dish	Permitted by Right in All Zoning Districts

Table 140.04.07.A, Permitted Accessory Uses and Structures

Accessory Use	Zoning Districts
Bed & Breakfast Inn or Short-Term Rental (Host-Occupied)	Permitted by Right Subject to Limitations in Subsection 140.04.07.B in All Residential Zoning Districts
Sign	Permitted by Right subject to § 141.05 in All Zoning Districts
Storage Building (residential)	Permitted by Right in All Zoning Districts
Swimming Pool (subject to the standards of subsection H, below)	Permitted by Right Subject to Limitations in Subsection 140.04.07.B in All Residential Zoning Districts
Tennis Court	Permitted by Right in All Zoning Districts
Wireless Telecommunications Antenna or Tower (subject to §140.04.03, Limited Use Standards)	Special Use subject to Section 140.04.05 in All Zoning Districts
Other Telecommunication Antenna or Tower	Permitted by Right in All Zoning Districts
Any other structure or use customarily incidental to the permitted primary use or structure	Permitted by Right in All Zoning Districts

3. **Establishment.** Accessory uses and structures shall not be constructed or established on a lot until construction of the principal building has commenced or the primary use is established.
4. **Dwelling.** Accessory buildings shall not be used for dwelling purposes, except as provided in Section 140.04.07.B, *Standards*.
5. **Location.**
 - a. *Required Setbacks.* Except as may be required for a specific accessory use or structure in Subsection 140.04.07.B, *Standards*, an accessory structure shall be located a minimum of five feet from a side or rear property line.
 - b. *Distance from Principal Structure.* No accessory structure shall be located less than 36 inches from the exterior wall of the principal structure. Structures that are located closer than 36 inches shall be considered as additions to the principal structure and shall conform to all applicable setbacks for the principal structure.
 - c. *Residential Lots Below Two Acres.* For residential lots not exceeding two acres, detached accessory buildings shall not be located in the front yard and shall not occupy more than 30 percent of the required rear yard.
 - d. *Residential Lots Two Acres or More.* For residential lots that are two acres or more, detached accessory buildings may be located in the front yard but not closer than 75 feet from the front property line/street right-of-way. Detached accessory buildings may be closer than the distance specified above if they are not visible from a public street.
 - e. *Non-residential Accessory Structures.* The location of permitted accessory structures associated with a non-residential use shall be governed by the same dimensional regulations as set forth for the principal use structure(s).
 - f. *Double Frontage Lots.* Accessory buildings on double frontage lots shall not be closer to either street than the required front yard setback.
6. **Height.** Accessory buildings shall not exceed:
 - a. The standard height regulations of the zoning district as set forth in Chapter 140.02, *Zoning Districts and Standards*, where accessory structure is located within the buildable lot area.
 - b. Fifteen feet in height, where the accessory structure is located within a principal structure setback yard.
7. **Size.** An accessory building shall not exceed the ground floor area of the principal building.
8. **Materials.** No accessory use of a structure shall be permitted that involves or requires any construction features or materials, which are not primarily residential in nature or character.



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9. **Lighting.** Exterior lighting for accessory uses and/or structures shall be placed so as to not directly or reflect light upon adjoining land.
10. **Exemptions.** The following uses/structures shall be exempt from the provisions of this Section:
 - a. Fencing and walls; However, in no case shall a rear or side yard fence exceed seven feet. Front yard fences shall not exceed five feet in height. Recreational facility fences are exempt from the height restrictions listed in this section.
 - b. Mailboxes.
 - c. Plant materials.
 - d. Any structure or improvement, once installed, is at grade or less than one foot above grade.

140.04.07.B Standards

1. **Approval of Accessory Uses and Structures.** The standards in this Section apply to accessory uses and structures that are listed as permitted subject to limitations or that require a Special Use Permit in Subsection 140.04.07.A, *General Provisions*.
2. **Accessory Dwelling Units (ADUs).**
 - a. *Zoning Districts.* ADUs are allowed in accordance with the use tables in § 140.02, *Zoning Districts and Standards*.
 - b. *Housing Standards.* ADUs shall comply with all applicable local, State, and Federal housing codes.
 - c. *Number.* Only one ADU shall be permitted per lot.
 - d. *Size of Unit.* The ADU shall not exceed 50 percent of the square footage of the livable area of the primary structure or 1,100 square foot of gross floor area, whichever is less.
 - e. *Location of the ADU on the Lot.* A detached ADU shall be sited to the rear of the principal building, as depicted in Figure 140.04.07.B, *ADU Location*. In the AG or RE zoning districts, the Accessory Dwelling unit may be sited to the side of the principal building only if the lot exceeds 10 acres in size.
 - f. *Manufactured Homes.* A manufactured home shall not be pulled up to or attached to a primary residence and considered an ADU. A manufactured home, as a principal or accessory dwelling unit, shall be permitted only in the MH Manufactured Home Overlay District.
 - g. *Parking.* Adequate off-street parking shall be provided for any vehicles owned by occupants of the ADU.
 - h. *Utilities.* Where there is no public sanitary sewer service to the ADU, County Health Department shall approve sanitary sewer services provided to such ADU prior to its construction.
 - i. *Owner-Occupied Restriction.* ADUs shall only be allowed on parcels that contain owner-occupied single-family dwelling units that are allowed as a principal permitted use.

Figure 140.04.07.B ADU Location**FIGURE NOTES:**

Yellow shaded in structures indicate ADU locations

3. **Agricultural Structure.** All buildings or structures (excluding fences) used to house livestock shall be located so that they are no closer than 150 feet from a dwelling unit. This requirement shall not apply if a dwelling unit is constructed so as to encroach upon an existing livestock use, except that such a livestock use may no longer expand towards a newly established residential use.
4. **Home Occupation.**
 - a. *Accessory to Dwelling.* A home occupation is permitted as an accessory use to any dwelling unit in accordance with the following standards.
 - b. *Accessory Structures.* A home occupation business is allowed in a permitted accessory structure.
 - c. *Floor Area.* A home occupation shall occupy no more than 25 percent of the total floor area of the residential structure.
 - d. *Residential Character.* The business shall not change the essential residential character of the dwelling and/or lot.
 - e. *Employment.* The use shall employ no more than one person who is not a resident of the dwelling. The owner may apply for a Special Use Permit in accordance with Section [145.04.03, Special Use Permit](#), in order to have one additional employee who is not a resident of the dwelling.
 - f. *Hours of Operation.* The business shall not operate outside of the hours of 7:00 AM to 7:00 PM. This time limitation shall apply to the actual operation of the business on site, and shall not apply to preparation time for business, including leaving or returning to the home.
 - g. *Equipment.* The home occupation shall not utilize mechanical, electrical, or other equipment which produces excessive noise, electrical or magnetic interference, vibration, heat, glare, or other nuisances outside of the dwelling or accessory structure.
 - h. *Outdoor Storage.* Outdoor storage of equipment, except for equipment of a type that could be reasonably associated with the principal use, is prohibited.
 - i. *Commercial Vehicles.* Only one commercial vehicle will be allowed in connection with the conduct of the home occupation.
 - j. *Signs.* One wall sign that is a maximum of one square foot in area is permitted.
 - k. *Prohibited Uses.* The following uses are prohibited from home occupation:
 - i. Uses in the following use categories: Heavy Industrial, Indoor Entertainment, Light Industrial, Outdoor Entertainment, and Vehicle Sales and Service.
 - ii. Furniture refurbishing.



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- iii. Gymnastics facilities.
- iv. Medical offices.
- v. Animal services.
- vi. Athletic studios or outdoor recreation.
- vii. Sales-Oriented Uses where the customer needs to come to the home occupation to make a purchase.
- viii. Mortuaries.
- ix. Body piercing and/or tattoos.
- x. Therapy with more than one client at a time.
- l. Any use that draws more than one client or customer to the dwelling at the same time on a regular basis; and
- m. The Director has the authority to allow or disallow a use based on the impact the use will have on the surrounding residential area.

5. Portable On-Site Storage.

a. ~~Exemptions.~~

- i. ~~The above restrictions do not apply to any parcel greater than five acres in size.~~
- ii. ~~The Temporary Use Permit fee may be waived in the case of damage as a result of fire, storm, flood, or other disaster events.~~
- iii. ~~Any commercial or residential construction site with active Zoning and Building Permits may have as many storage units as are needed on the site without restrictions or permits.~~
- iv. ~~Tenure. A unit may remain on the parcel for a maximum of 90 days per calendar year without obtaining a Temporary Use Permit. A written reason, timeline, and completion date must be submitted by the applicant prior to the issuance of the permit.~~
- v. ~~Location.~~
 - A. ~~A unit shall be placed in the side or rear yard only. However, the unit may be placed in the front yard if side and rear areas are not accessible, as determined by the Director (unless the unit adversely impacts safety, sight triangles, or emergency response access). The unit shall not be placed in any recorded easement or in the street right of way.~~
 - B. ~~A unit shall be placed a minimum of five feet from side and rear property lines. There is no minimum spacing between units.~~
- vi. ~~Number. There shall be a maximum of two portable on-site storage units per parcel at any one time.~~
- vii. ~~Generally. The following requirements apply to any residential zone or used property upon which a portable on-site storage unit is to be placed.~~

Portable storage containers may be permitted as an accessory use to residential a use in all zoning districts, subject to the following conditions:

- a. Permit Required. A Temporary Use Permit shall be required for portable on-site storage use operating beyond a 14-day period and shall be issued in accordance with Section 145.02.10 of this document.
- b. Exemptions. The standards in this section shall not apply to portable storage containers used as temporary construction trailers, dumpsters, or recycling facilities, provided construction on the site is on-going.
- c. Maximum Number, Size and Types. A maximum of two portable storage containers shall be located on a single lot limited in size to no larger than eight feet in height, eight feet in width, and 20 feet in length, and shall take on of the following three forms:
 - i. A container used for the purposes of storage of personal property such as household items being temporarily stored or relocated.
 - ii. A roll-off box, bin, or construction dumpster used for the collection and hauling of waste or debris; or
 - iii. A fully enclosed, non-motorized, trailer (commonly known as a semi-trailer) with wheels intended

to be towed to a site for the purpose of storage or transport of goods, material, or equipment.

d. Location.

- i. A portable storage container may be located in a driveway, a designated parking area, or behind a dwelling. If site conditions make placement of the portable storage container within these areas, then the container may be located immediately adjacent to the driveway or designated parking area.
 - ii. A portable storage container shall be located a minimum of five feet from any principal or accessory structure.
 - iii. In no instance shall a portable storage container be located within a Town street, public street right-of-way, or location that poses a threat to public health or safety.
- e. Duration.** A portable storage container may be located on a site for a maximum of up to 90 days per calendar year. A temporary use permit time extension request may be considered for approval by the Planning Director for special circumstances.
- f. Homeowners Association Restrictions:** These regulations do not supersede any private codes, covenants, or restrictions that a property is legally subject to.

5. Recycling Facilities and Drop Off Sites.

- a. *Unattended Clothing Donation Containers.* Unattended clothing donation containers are prohibited unless located at the operational site of a company or organization that collects used clothing for resale or donation as a primary business function.
- b. *Removal of Prohibited Clothing Donation Containers.* Prohibited clothing donation containers that exist at the time this section is adopted shall be removed within 30 days of adoption.

6. Short-Term Rental (Host-Occupied).

1. *Host Occupation.* A short-term rental property shall be considered host-occupied if the property is the host's primary residence for a minimum of 183 days per calendar year.
2. *Housing Type.* A short-term rental shall only take place in a single-family detached dwelling.
3. *Tenure.* A short-term rental tenant shall not stay more than 29 consecutive days in duration.
4. *Number of Tenant Rooms.* A short-term rental shall have no more than two tenant rooms.

5. **Number of Occupants.** Each short-term rental tenant room shall be limited to a maximum of two adults, over 18 years old.
6. **Signs.** One wall sign that is a maximum of one square foot in area is permitted.
7. **Insurance.** Each short-term rental host shall obtain and maintain, at the host's sole expense, liability insurance to cover the injury or death of a tenant while the tenant is in, on, or about the short-term rental property.
8. **Parking.** Each short-term rental shall provide one off-street parking space for each tenant room.
7. **Solid Waste Storage Areas.**
 - a. **Lids.** Solid waste dumpsters or other large containers for solid waste storage shall have a lid to minimize the potential contamination of stormwater runoff. These provisions shall apply to all nonresidential and mixed-use development, multifamily residential developments and/or single-family attached residential developments, which do not use roll-out containers for curbside solid waste pickup.
 - b. **Materials.** Enclosures shall be constructed of durable, weather-proof, permanent materials such as concrete or stone block, metal, wood, or similar material. The applicant shall ensure that the choice of materials and color are consistent and compatible with those of the principal building(s) on the site.
 - c. **Screening.** Solid waste dumpsters or other large containers for solid waste or recycling storage shall be confined in an enclosed area that is screened on all sides. A solid waste enclosure, large enough to confine solid waste items and dumpster(s), shall be of solid opaque construction, six-foot high with latching gates providing access, and shall be composed of materials that are consistent and compatible with those of the principal building(s) on the site. No solid waste storage area shall be located in any front building yard setback or any street yard or buffer yard.
8. **Retail Operations in the EC District.** Retail sale of items or products manufactured or stored by the primary use are permitted subject to the limitation that interior retail operations may not exceed 20 percent of the individual business's gross floor area of the site. Outdoor display areas shall not exceed 10 percent of the individual business's gross square footage.
9. **~~Food Truck Courts. Reserved~~**
 - a. ~~Permission. The operator of a food truck shall obtain, in writing, and have on hand, the property owner's permission to operate on the property.~~
 - b. ~~Placement. The food truck court shall not be located in any required setback, sight triangle, or buffer.~~
 - c. ~~Associated Use Categories. Food truck courts are permitted as accessory uses to uses in the following use categories:~~
 - i. ~~Community Amenities;~~
 - ii. ~~Educational Facilities;~~
 - iii. ~~Medical Facilities;~~
 - iv. ~~Parks and Open Areas;~~
 - v. ~~Public Assembly;~~
 - vi. ~~Entertainment, Indoor;~~
 - vii. ~~Entertainment, Outdoor;~~
 - viii. ~~Office; or~~
 - ix. ~~Retail Repair, Sales, and Service.~~
 - d. ~~Food Trucks in Public Right-of-Way. This section of the UDO does not regulate the placement of food trucks in the public right-of-way.~~
10. **Swimming Pools.** A private swimming pool along with incidental installations, such as pumps and filters, is permitted in any residential zoning district subject to the following standards.
 - a. **Location.**
 - i. The swimming pool and incidental installations shall be located in other than the front yard.
 - ii. The swimming pool shall be set back from all lot lines a distance of not less than five feet

140.04.08 Temporary Use and Structure Standards

140.04.08.A General Provisions

- Generally.** Permitted temporary uses and structures are set forth in Table 140.04.08.A, *Permitted Temporary Uses and Structures*. Standards for temporary uses and structures are set forth below and in Section [140.04.07.B](#) [140.04.08.B](#), *Standards*.
- Purpose.** The Temporary Use Permit is a mechanism to allow a use on a short-term basis and certain seasonal or transient uses not otherwise allowed. Prior to conducting or establishing a temporary use or structure, approval of a Temporary Use Permit by the Director is required pursuant to Section [145.02.10](#), *Temporary Use Permit*.
- Permitted Temporary Uses.** The uses listed in Table 140.04.08.A below shall be permitted by right (unless noted otherwise) in any of the listed zoning districts.

Table 140.04.08.A, Permitted Temporary Uses and Structures													
TP = Temporary Permitted Use TS = Temporary Special Use -- = Prohibited Use Maximum Events per Year / Days per Event (Duration Column)													
Temporary Use	Duration	Zoning Districts											
		Homestead and Residential					Non-Residential and Mixed-Use						
		AG	RE	RL	RM	RH	MU	CC	O-I	NC	GC	CD, EC	
Amusement Enterprises	1 / 21	--	--	--	--	--	--	--	TP	--	TP	TP	
Commercial Outdoor Sales Event	4 / 7	--	--	--	--	--	TP	TP	--	--	TP	--	
Contractors' Office (Temporary)	See 140.04.07.B 140.04.08.B	TS TP	TS TP	TS TP	TS TP	TS TP	TS TP	TS TP	TP	TS TP	TP	TP	
Fireworks Stand	1 / 45	TP	--	--	--	--	--	--	TP	TP	TP	TP	
Food Truck	365 / 1-3 See 140.04.08.B	--	--	--	--	--	TP	TP	TP	TP	TP	TP	
Outdoor Circus, Carnival, Exhibition, or Show	1 / 30	--	--	--	--	--	--	--	--	--	TS	TS	
Real Estate Office in a Construction Trailer or Temporary Modular Unit	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	
Real Estate Office in a Model Home	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	TP	TP	--	--	--	--	
Religious Event	1 / 60	TP	--	--	--	--	--	TP	TP	TP	TP	TP	
Seasonal Sale of Agricultural Products	4 / 30	TP	--	--	--	--	--	--	--	--	TP	TP	
Sidewalk Vendor	3-45 140.04.08 B(2)(c)	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	--	
Single Family Dwelling in Temporary Structure	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	TP	
Temporary Residence in Mobile Home During Construction of New Home	See 140.04.07.B 140.04.08.B	TP	TP	TP	TP	TP	--	--	--	--	--	--	

- 4. Review Criteria.** All temporary uses listed in this Section require a Temporary Use Permit. The Director shall not approve or modify and approve an application for a Temporary Use Permit unless the following general criteria, specific regulations and time limitations are met in addition to standards for any particular temporary use as specified in Section ~~140.04.07.B~~ **140.04.08. B**, *Standards*.
- a. *Compatibility with/Effect on Surrounding Area.* The allowance of such use shall not be detrimental to the public health, safety, and general welfare, and the use shall be consistent with the purpose and intent of this UDO and the specific zoning district in which it will be located; and the use is compatible in intensity, characteristics and appearance with existing land uses in the immediate vicinity of the temporary use, and the use, value and qualities of the neighborhood surrounding the temporary use will not be adversely affected by the use or activities associated with it. In addition to those listed herein, factors such as location, noise, odor, light, dust control and hours of operation shall be considered.
 - b. *Location (Permission Required).* The use shall not be on publicly or privately owned property unless the applicant first obtains written approval from the owner.
 - c. *Traffic.* The location of the temporary use or structure shall be such that adverse effects on surrounding properties will be minimal, particularly regarding any type of traffic generated or impacted by the temporary use or structure and impact upon *traffic circulation in the area*.
 - d. *Parking and Access.* Adequate off-street parking shall be provided to serve the use. The use shall not displace the required off-street parking spaces or loading areas of the principal permitted uses on the site. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.
 - e. *Property Line Setbacks.* Structures and/or display of merchandise shall comply with the yard and property line setback requirements of the zone district within which it is located. The items shall be displayed so as not to interfere with the sight triangle of the intersection of the curb line of any two streets or a driveway and a street. In no case shall items be displayed, or business conducted within the public right-of-way, except that this Section shall not apply to the CC or MU district *with the issuance of an encroachment permit*.
 - f. *Signs.* Signage for temporary uses shall be permitted only within the time frame for which the temporary use is permitted. See Section **141.05.05**, *Temporary Signs* for specific standards for signs.
 - g. *Number per Parcel.* Only one Temporary Use Permit shall be permitted for a single parcel of land at any given time *unless authorized with an approved Special Use Permit*.
 - h. *Utilities.* Temporary uses must provide sufficient potable water and adequate sewage disposal.
 - i. *Outdoor Lighting.* All light sources must be directed inward to the site and downward and away from adjacent properties. Refer to § **141.06**, *Outdoor Lighting*.
 - j. *Public Convenience and Litter Control.*
 - i. Adequate public restroom facilities and waste containers shall be required on-site.
 - ii. After the temporary use is finished, the site shall be returned to its condition prior to the temporary use being established, including, but not limited to, removal of all litter and any other facilities related to the use, at no expense to the Town.
- 5. Period of Time Between Permits.** The period of time ~~an expired~~ **between** Temporary Use Permits on a parcel ~~and application for another Temporary Use Permit on that parcel~~ shall be at least ~~three months~~ **30-days or as otherwise stated within Subsection 140.04.08B**. *Any request for less than the 30-day time period between permits shall require approval of a Special Use Permit*. This restriction shall not apply to real estate development and construction related temporary uses as set forth in Subsection ~~140.04.07.B~~ **140.04.08. B**, *Standards*.
- 6. Similar and Compatible Uses not Specified.**
- a. *Authority.* If a particular temporary use is not listed in this UDO, the Director shall have the authority to grant a temporary use permit for a "similar and compatible use".
 - b. *Similar and Compatible Uses.* Similar and compatible uses not specified are those uses which are similar and compatible with those allowed as temporary uses in this Section.
 - c. *Use Determination.* Determination of what constitutes similar and compatible shall be made by the Director. In such instances, the applicant shall provide the following information:
 - i. *Type of use.*

- ii. Number of employees.
- iii. Parking/circulation needs/hours of operation; and
- iv. Duration of operation.
- d. *Appeals.* If the Director determines that the use is not similar and compatible, the applicant may appeal the decision to the Planning and Zoning Board of Adjustment in accordance with Section 145.04.04, Appeal of Administrative Decisions.

140.04.08.B Standards

1. **Approval of Temporary Uses and Structures.** The standards in this Section apply to temporary uses and structures that are listed as permitted subject to limitations or that require a Special Use Permit in Subsection 140.04.0708.A, *General Provisions*.
2. **Temporary Retail Sales Uses.**
 - a. *Fireworks Stands.* Limited to only non-residential zones for a period of time not to exceed 45 days. A maximum of one structure, not to exceed 120 square feet in area, shall be allowed. The structure must be portable and completely removed at the end of the permit period. Any sales of fireworks shall be regulated in accordance with NCGS 14-410 and 14-414 and NC Fire Code.
 - b. *Seasonal Sale of Agricultural Products (including Christmas Trees).* Temporary Use Permits are required for all Roadside Stands in non-residential zoning districts. Such sales are limited to a period of time not to exceed four consecutive months per calendar year. A maximum of one building/display booth shall be allowed and may cover a maximum of 400 square feet. The structure must be portable and completely removed at the end of the period.
 - c. *Sidewalk Vendors.* A sidewalk vendor is defined as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. This use is prohibited except when:
 - i. Conducted in conjunction with a Town sponsored or recognized event; or
 - ii. As granted by permission of the Town.

~~The sale of food, beverages, or merchandise from a stand or from a person may be allowed in the GC-zoning district and shall be limited to a period not to exceed 90 continuous days per calendar year in a given location. Even if at any time the vendor does not occupy the permitted site, the 90-day limit shall not be extended.~~
3. **Real Estate Development and Construction-related Temporary Uses.**
 - a. *Contractors Office and Equipment/Storage Sheds.* Placement of such as a temporary use is limited to a period of time determined by an estimated project completion date with the option of an extension of up to one year if approved by the Director. A construction trailer may be used for a contractor's office or for the contractor's storage of equipment or materials. All temporary buildings and trailers shall be completely removed from the site within thirty days of issuance of a Certificate of Compliance and Occupancy or completion of the construction project, whichever occurs first.
 - b. *Real Estate Office in a Construction Trailer or Temporary Modular Unit.* Temporary structures, such as construction trailers or temporary modular units may be used as real estate sales offices in any new residential construction project for the sale of units within that project only. Such a temporary use may be allowed in all zoning districts. In the event that multiple builders are involved in a new construction project, one construction trailer or temporary modular unit may be permitted (as a sales office) per builder. Each individual trailer or modular unit shall be located on an individual lot. In no case shall multiple permits be issued for the same Parcel Identification Number (PIN). The permit shall be valid until the project is completed or for a period of two years from the time of the recording of the most recent final plat. All temporary structures shall be removed within 30 days of the completion of the project.
 - c. *Real Estate Office in a Model Home.* Temporary structures, such as a real estate office in a model home, are limited to a period of time not to exceed one year with the option of an extension of up to one year as and if approved by the Director. The number of employees utilizing the office at any one time may not exceed five. A real estate office may not contain sleeping or cooking accommodations unless located in a model dwelling.



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- d. **Single Family Dwelling in Temporary Structure.** During the active construction period (after a building or grading permit has been issued) of a construction project involving a non-residential use or a residential development with building permit(s) for more than 50 units at any one time, one mobile home or trailer may be allowed on the same property to be used as a temporary residence by a night watchman for a period not to exceed 12 months or the active construction period, whichever is less. The temporary home shall be removed from the site within 14 days of issuance of the Certificate of Zoning Compliance for a non-residential structure or the first residential unit if within a residential development.
- e. **No Recreational Vehicles.** No Recreational Vehicles shall be permitted as a Temporary Use or Structure.
- f. **Temporary Residence in Mobile Home During Construction of New Home.** In the event that a new single-family home is being constructed on a parcel where a mobile home currently exists, the mobile home may remain for the duration of the building process for the new home. Said mobile home shall be removed within 30 days of the date of the last final inspection, as required by North Carolina Building Codes and/or any other applicable codes. Said inspections include, but are not limited to: final building, electric, plumbing and/or mechanical inspections for occupancy of the structure.
- g. **Amusement Enterprises.** Carnivals, circuses, fairs, and amusement rides may be allowed in any non-residential zoning district for a period not to exceed 21 days within any calendar quarter. This classification excludes events conducted in a permanent entertainment facility.
- h. **Religious Events.** Religious events in a tent or other temporary structure may be allowed in any non-residential zoning district for a period not to exceed 60 days.
- 4. **Commercial Outdoor Sales Event.** Such activities may be conducted outside for a period of not more than seven consecutive days. If the private sidewalk or pedestrian way in front of the building is used for display of merchandise, a minimum width of four feet must remain unobstructed for pedestrian use. A Temporary Use Permit for promotional activities may be renewed four times during any calendar year, for a maximum of 28 days per calendar year.
- 5. **Special Events and Activities.** Special events and activities conducted on public property, such as school sites and public parks shall be exempt from the provisions of this Section of the UDO but must comply with any guidelines, regulations and permitting process required by the authorizing agency (e.g., School District or a Parks and Recreation Department).
- 6. **Food Truck.** A food truck is defined as a food service establishment on a motor vehicle or on a trailer that a motor vehicle pulls to transport, from which a vendor standing within the frame, sells food and/or drink processed or prepared on-site to walk-up customers. **MOBILE FOOD VENDING.** Commercial food service sales conducted through use of a food truck.
 - a. **Permitting.** A Temporary Use Permit (TUP) may be issued in compliance with review criteria found in 140.04.08.A and the following:
 - i. Mobile food vending is prohibited on vacant properties unless authorized through a Special Use Permit. Criteria for consideration should include:
 - 1. Location. Town Activity Center
 - 2. Safety. Can the site be accessed by emergency services and patrons safely.
 - 3. Parking Availability.
 - ii. Placement of food trucks shall be limited:
 - 1. Paved areas, outside of fire lanes, landscaped and/or buffer areas.
 - 2. A minimum separation of 100 feet from the front door of an existing business, or restaurant, not affiliated with the mobile food service shall be required.
 - iii. Hours of operation shall be limited to between 8:00 a.m. and 10:00 p.m. Food trucks, trailers, or other associated equipment may not remain after hours upon the premises unless registered to participate in a special event recognized by the town or owned and operated on the premises of an existing restaurant.
 - iv. Service is limited to walk-up service (no drive-through).
 - v. Mobile food vending shall be prohibited from discharging fat, oil, grease, or wastewater into the sanitary sewer system. Waste shall be properly stored and disposed of at a properly designated location.
 - vi. The noise level from the food truck motor and/or generator must comply with the town's

noise ordinance. The use of solar generators in conjunction with Food Trucks operated within the Town is encouraged.

- vii. Vendors shall comply with all local, county, and state regulations, licensing, registrations, and permitting, including sales tax regulations.

b. **Duration.** A temporary use permit may be issued to a food truck vendor to operate for:

- i. A maximum of three consecutive days on any site or parcel.
- ii. The minimum time between temporary use permits on the same site or parcel shall be limited to a 30-day period.
- iii. Flexibility in duration requirements noted above may be considered and approved by Special Use Permit.

c. **Public Property.** Food trucks may not be operated on public property such as parks or plazas, parking lots, public street rights-of-way, or public sidewalk except as specifically authorized by the Town and/or as part of an official public event sponsored or co-sponsored by the Town.

d. **Other Zoning Districts.** In all zoning districts other than those listed in Table 140.04.08. A, listed above, food trucks may be allowed without a permit:

- i. On commonly owned property within a residential development serving residents and guests at a neighborhood activity or function; and
- ii. Sites undergoing construction in accordance with a valid development plan and permits. Such trucks may vend to persons lawfully authorized to be on the construction site and not to the general public.



TOWN OF HARRISBURG

Agenda Item Details

Title:

Training - Billboard Regulations

Presenting Personnel:

Shelley DeHart, Assistant Planning Director

Suggested Motion or Action:

No action required. Receive Information regarding billboard regulations.

Description/Background:

The Town has received an application proposing to amend the UDO regulations related to Billboard signage. In preparation for this upcoming case, staff will be providing the Board with an overview of state and local regulations, types of billboard signs, typical standards applied to these signs, and the permitting option tools available to local jurisdictions.

Recommendation:

No action required. Receive Information regarding billboard regulations.

Fiscal Impact:

None

Attachments:

1. Billboard Information_PB Meeting
2. Billboard_ Harrisburg UDO Adopted 08.09.21
3. Outdoor Advertising Control Act
4. APA Policy Guide on Billboard Controls



Planning and Zoning Department

**Staff Report – Planning and Zoning Board
Billboard Regulations**

DATE: November 2, 2023

SUBJECT: Billboard Regulations

Staff Report Prepared by: Shelley DeHart, Assistant Planning Director

BACKGROUND:

The Town has received a request to amend the UDO to allow for modernization of a non-conforming billboard sign. Specifically, the request is to allow for the conversion of a static billboard sign to a digital sign.

The intent of this topic report is to provide some background information associated with regulating billboards, review Town regulations, and share examples of regulations from other jurisdictions that do allow conversion of signs from a static to a digital format.

REGULATIONS

Billboard signs have been intertwined into the visual fabric of America’s culture since the mid-1800s. The billboard sign started as a poster advertisement and quickly grew in popularity and size. In 1900, a standardized billboard structure was established in America and ushered in a boom in national billboard campaigns. The use of billboard signs was not limited to large companies, such as Kellogg or Coca-Cola, as open boards were also used for “public service messages” much like today.

The boom of the billboard also ushered in concern and a desire by local communities to control outdoor advertising. In 1958 Congress passed its first outdoor advertising control legislation. It was later repealed by the Highway Beautification Act of 1965. This federal legislation regulated billboards on interstate and federal-aid highways by limiting them to commercial and industrial areas and requiring states to set size, lighting, and spacing standards. Their removal required just compensation of lawfully erected signs (non-conforming). The state agency that provides administration of the program in North Carolina is NC DOT as assigned in the [Outdoor Advertising Control Act](#).

The framework for state and local regulations for billboards have remained similar to the framework established during that era. There have been attempts by local jurisdictions over the years to ban billboard signs. The landmark case of Metromedia, Inc. v. City of San Diego, went to the Supreme Court where the Court invalidated San Diego’s anti-billboard ordinance reasoning that the law reached “too far into the realm of protected speech.”

HARRISBURG'S UNIFIED DEVELOPMENT ORDINANCE (UDO)

Our ordinance defines billboard signs as follows:

Outdoor Advertising (Billboard) Signs means a permanently installed sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said sign is located. This definition does not include any sign that displays only noncommercial messages.



Effective on: 5/3/2021

Performance standard regulations for these signs can be found in [Section 141.05.04 \(G\) of the UDO \(Attachment A\)](#). This section outlines the allowed:

- Location
- Size
- Height
- Separation requirements
- Type of sign- Static Message – No Digital Message Board

JURISDICTIONAL BILLBOARD SIGN ORDINANCE EXAMPLES

While researching billboard ordinances in North Carolina, it was found that more ordinances prohibit digital billboards than allow them. Many of the existing digital billboards are located within NC DOT areas (Interstates) and are not regulated by local jurisdictions. Example ordinances include:

- Greensboro: <http://online.encodeplus.com/regs/greensboro-nc/doc-viewer.aspx?secid=166#secid-166>
- City of Charlotte: https://library.municode.com/nc/charlotte/codes/code_of_ordinances/264937?nodeId=PTIICOOR_APXAZO_CH13SI_S13.111REOUADSI
- Wilmington: https://library.municode.com/nc/wilmington/codes/code_of_ordinances?nodeId=PTIITECO_CH18LADECO_ART12SIRE_DIVIVREOUADSI

- i. The display surface shall be kept clean, neatly painted, and free from corrosion.
 - ii. The mural shall be kept in good condition for the life of the mural. A mural is not in good condition when 25 percent or more of the display surface area contains peeling, faded or flaking paint, or is otherwise not preserved in the manner in which it was originally created.
- e. **Murals on Historic Buildings**
 - 1. **Placement.** Murals on historic buildings shall be placed:
 - a. Within the sign frieze, or
 - b. A distinct place where the mural was intended or designed to be located.
 - 2. **Extent.** No mural shall extend beyond the space designated in Subsection 1, *Placement*, above.
 - 3. **Design.** The design and coloration of murals shall be compatible with the character of the building.

G. Outdoor Advertising (Billboard) Signs. The maximum permitted sign area, location, characteristics, and number of off-premise Outdoor Advertising Signs (Billboards) is determined in accordance with the standards in this Section. The following additional regulations apply to Billboards:

- 1. Billboards are permitted only in the CD and EC districts with the issuance of a Special Use Permit.
- 2. Billboards are limited to a maximum size of 150 square feet along all streets or roads.
- 3. Billboards shall be setback at least 50 feet from the public right-of-way, or any legal private access road.
- 4. Billboards shall not exceed 30 feet in overall height.
- 5. There shall be only one face per side of the sign. "Double-decker" signs with signs erected one over or above the other and side-by-side signs with signs erected one next to the other are prohibited.
- 6. Billboards shall be located at least 1,000 feet from any Residential Zoning District or residentially developed property, whether within the jurisdictional limits of the Town or not. The distance is measured radially from the proposed sign location to the nearest point of the residential district or property.
- 7. Each Billboard shall be located at least 1,000 feet from any Billboard, located on the same or on the opposite side of the street. The distance is measured radially from the proposed sign location to the existing sign location.
- 8. Billboards shall be at least 100 feet from any existing or proposed building, off-street parking area or other building or structure. The distance is measured radially from the proposed sign location to the nearest point of the building, off-street parking area, or other building or structure.
- 9. No vegetation in the public right-of-way shall be cut to increase or permit visibility to a Billboard unless approved by the chief engineer of the governmental authority having jurisdiction over that right-of-way.
- 10. No Billboard shall be located in a required front yard setback.
- 11. Billboards shall meet 30 PSF wind loading requirements and all supports shall be of steel, aluminum, concrete or other non-combustible material.
- 12. No Billboard shall be erected closer than 10 feet from any electric conductor and shall comply with all requirements of the National Electrical Code with respect to clearance from overhead electrical conductors.
- 13. Changeable copy or electronic reader board signs are not allowed as part of any Billboard.

H. Subdivision Entrance Sign. A subdivision entrance sign is permitted in association with a residential subdivision with 10 or more lots or with a nonresidential or mixed use subdivision.

ARTICLE 11.
Outdoor Advertising Control Act.

§ 136-126. Title of Article.
This Article may be cited as the Outdoor
Advertising Control
Act. (1967, c. 1248, s. 1.)

§ 136-127. Declaration of policy.

The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary highway systems within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising. (1967, c. 1248, s. 2; 1999-404, s. 6.)

§ 136-128. Definitions.

As used in this Article:

- (1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
- (1a) "Illegal sign" means one which was erected and/or maintained in violation of State law.
- (1b) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the Department of Transportation may consider desirable.
- (2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as officially designated, or as may hereafter be so designated, by the Department of Transportation, or other appropriate authorities and are also so designated by interstate numbers. As to highways under construction so designated as interstate highways pursuant to the above

procedures, the highway shall be a part of the interstate system for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities.

(2a) "Nonconforming sign" shall mean a sign which was lawfully erected but which does not comply with the provisions of State law or State rules and regulations passed at a later date or which later fails to comply with State law or State rules or regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(3) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.

(4) "Primary systems" means the federal-aid primary system in existence on June 1, 1991, and any highway which is not on that system but which is on the National Highway System. As to highways under construction so designated as primary highways pursuant to the above procedures, the highway shall be a part of the primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.

(5) "Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

(6) "State law" means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.

(7) "Unzoned area" shall mean an area where there is no zoning in effect.

(8) "Urban area" shall mean an area within the boundaries or limits of any incorporated municipality having a population of five thousand or more as determined by the latest available federal census.

(9) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. (1967, c. 1248, s. 3; 1973, c. 507, s. 5; 1975, c. 568, ss. 1-4; 1977, c. 464, s. 7.1; 1997-456, s. 27; 1999-404, s. 7.)

§ 136-129. Limitations of outdoor advertising devices.

No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge

of the right-of-way of the interstate or primary highway systems in this State so as to be visible from the main-traveled way thereof after the effective date of this Article as determined by G.S. 136-140, except the following:

(1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.

(2) Outdoor advertising which advertises the sale or lease of property upon which it is located.

(2a) Outdoor advertising which advertises the sale of any fruit or vegetable crop by the grower at a roadside stand or by having the purchaser pick the crop on the property on which the crop is grown provided: (i) the sign is no more than two feet long on any side; (ii) the sign is located on property owned or leased by the grower where the crop is grown; (iii) the grower is also the seller; and (iv) the sign is kept in place by the grower for no more than 30 days.

(3) Outdoor advertising which advertises activities conducted on the property upon which it is located.

(4) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in areas which are zoned industrial or commercial under authority of State law.

(5) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in unzoned commercial or industrial areas. (1967, c. 1248, s. 4; 1972, c. 507, s. 5; 1975, c. 568, s. 5; 1977, c. 464, s. 7.1; 1991 (Reg. Sess., 1992), c. 946, s. 1; 1999-404, s. 8.)

§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet.

No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway systems in this State outside of the urban areas so as to be visible and intended to be read from the main-traveled way except the following:

(1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to

natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.

(2) Outdoor advertising which advertises the sale or lease of property upon which it is located.

(3) Outdoor advertising which advertises activities conducted on the property upon which it is located. (1975, c. 568, s. 6; 1999-404, s. 9.)

§ 136-129.2. Limitation of outdoor advertising devices adjacent to scenic highways, State and National Parks, historic areas and other places.

(a) In addition to the limitations contained in G.S. 136-129 and G.S. 136-129.1, in order to further the purposes set forth in Article 10 of this Chapter and to promote the reasonable, orderly, and effective display of outdoor advertising devices along highways adjacent to scenic and historical areas, while protecting the public investment in these highways and promoting the safety and recreational value of public travel, and to preserve natural beauty, no outdoor advertising sign shall be erected adjacent to any highway which is either:

(1) a. A scenic highway or scenic byway designated by the Board of Transportation;

b. Within 1,200 feet, on the same side of the highway, of the boundary line of a North Carolina State Park, a National Park, a State or national wildlife refuge, or a designated wild and scenic river; or

c. Within 500 feet, on the same side of the highway, of the boundary lines of any historic districts and other properties listed in the National Register of Historic Places or State rest areas, or within the boundary lines of any historic district; except as permitted under G.S. 136-129(1), (2), (2a), or (3); or

d. Within one-third of the applicable distances under sub-subdivision (a)(1)b. and (a)(1)c. of this section, along the opposite side of the highway from any of the properties designated in sub-subdivision (a)(1)b. and (a)(1)c. of this section, except as permitted under G.S. 136-129(1), (2), (2a), (3), (4), or (5).

(b) The distances set forth in this section shall be measured horizontally in linear feet extending in each direction along the edge of the pavement of the highway from any point on the boundary of the subject property, or any point on the opposite side of the highway perpendicular to any point on the boundary line of the subject property.

(c) As used in sub-subdivision (a)(1)b. and (a)(1)c. of this section, the term "highway" means a highway that is designated as a part of the

interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System. (1993, c. 524, s.1.)

§ 136-130. Regulation of advertising.

The Department of Transportation is authorized to promulgate rules and regulations in the form of ordinances governing:

- (1) The erection and maintenance of outdoor advertising permitted in G.S. 136-129,
- (2) The erection and maintenance of outdoor advertising permitted in G.S. 136-129.1,
- (2a) The erection and maintenance of outdoor advertising permitted in G.S. 136-129.2,
- (3) The specific requirements and procedures for obtaining a permit for outdoor advertising as required in G.S.136-133 and for the administrative procedures for appealing a decision at the agency level to refuse to grant or in revoking a permit previously issued, and
- (4) The administrative procedures for appealing a decision at the agency level to declare any outdoor advertising illegal and a nuisance as pursuant to G.S. 136-134, as may be necessary to carry out the policy of the State declared in this Article. (1967, c. 1248, s. 5; 1973, c. 507, s. 5; 195, c. 568, s. 7; 1977, c. 464, ss. 7.1, 31; 1993, c. 524, s. 2.)

§ 136-131. Removal of existing nonconforming advertising.

The Department of Transportation is authorized to acquire by purchase, gift, or condemnation all outdoor advertising and all property rights pertaining thereto which are prohibited under the provisions of G.S. 136-129, 136-129.1 or 136-129.2, provided such outdoor advertising is in lawful existence on the effective date of this Article as determined by G.S. 136-140, or provided that it is lawfully erected after the effective date of this Article as determined by G.S. 136-140.

In any acquisition, purchase or condemnation, just compensation to the owner of the outdoor advertising, where the owner of the outdoor advertising does not own the fee, shall be limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real property on which the outdoor advertising is located and such value shall include the value of the outdoor advertising.

In any acquisition, purchase or condemnation, just compensation to the owner of the fee or other interest in the real property upon which the outdoor advertising is located where said owner does not own the outdoor advertising located thereon shall be limited to the difference

in the fair market value of the entire tract immediately before and immediately after the taking by the Department of Transportation of the right to maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration. In any acquisition, purchase or condemnation, just compensation to the owner of the fee in the real property upon which the outdoor advertising is located, where said owner also owns the outdoor advertising located thereon, shall be limited to the fair market value of the outdoor advertising plus the difference in the fair market value of the entire tract immediately before and immediately after the taking by the Department of Transportation of the right to maintain such outdoor advertising thereon and in arriving at the fair market value after the taking, any special or general benefits accruing to the property by reason of the acquisition shall be taken into consideration. (1967, c. 1248, s. 6; 1973, c. 507, s. 5; 1975, c. 568, ss. 8-10; 1977, c. 464, s. 7.1; 1993, c. 524, s. 3.)

§ 136-131.1. (Expires June 30, 2002 -- See editor's note) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

No municipality, county, local or regional zoning authority, or other political subdivision, shall, without the payment of just compensation in accordance with the provisions that are applicable to the Department of Transportation as provided in paragraphs 2, 3, and 4 of G.S. 136-131, remove or cause to be removed any outdoor advertising adjacent to a highway on the National System of Interstate and Defense Highways or a highway on the Federal-aid Primary Highway System for which there is in effect a valid permit issued by the Department of Transportation pursuant to the provisions of Article 11 of Chapter 136 of the General Statutes and regulations promulgated pursuant thereto. (1981 (Reg. Sess., 1982), c. 1147, ss. 1, 2; 1983, c. 318, s. 1; 1987 (Reg. Sess., 1988), c. 1024, s. 1; 1989, c. 166, s. 1; 1993 (Reg. Sess., 1994), c. 725, s. 1; 1998-23, s. 7; 1998-212, s. 27.5(a).)

§136-132. Condemnation procedure.

For the purpose of this Article, the Department of Transportation shall use the procedure for condemnation of real property as provided by Article 9 of Chapter 136 of the General Statutes. (1967, c. 1248, s. 7; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§ 136-133. Permits required.

No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules adopted by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules adopted by the Department of Transportation. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules adopted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a forty dollar (\$40.00) initial fee and a thirty dollar (\$30.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a one hundred twenty dollar (\$120.00) initial fee and a sixty dollar (\$60.00) annual renewal fee.

If outdoor advertising is under construction and the Department of Transportation determines that a permit has not been issued for the outdoor advertising, the Department may require that all work on the outdoor advertising cease until the owner of the outdoor advertising shows that the outdoor advertising does not violate this section. The stopwork order shall be prominently posted on the outdoor advertising structure, and no further notice of the stopwork order is required. The failure of an owner of outdoor advertising to comply immediately with the stopwork order shall subject the outdoor advertising to removal by the Department of Transportation or its agents. Outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public. The cost of removing outdoor advertising by the Department of Transportation or its agents pursuant to this section shall be assessed against the owner of the unpermitted outdoor advertising by the Department of Transportation. No stopwork order may be issued

when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed. (1967, c. 1248, s. 8; 1973, 507, s. 5; 1975, c. 568, s. 11; 1977, c. 464, ss. 7.1, 32; 1983, c. 604, s. 2; 1989, c. 677; 1999-404, s. 1.)

§ 136-134. Illegal advertising.

Any outdoor advertising erected or maintained adjacent to the right-of-way of the interstate or primary highway system after the effective date of this Article as determined by G.S.136-140, in violation of the provisions of this Article or rules adopted by the Department of Transportation, or any outdoor advertising maintained without a permit regardless of the date of erection shall be illegal and shall constitute a nuisance. The Department of Transportation or its agents shall give 30 days' notice to the owner of the illegal outdoor advertising with the exception of the owner of unlawful portable outdoor advertising for which the Department of Transportation shall give five days' notice, if such owner is known or can by reasonable diligence be ascertained, to remove the outdoor advertising or to make it conform to the provisions of this Article or rules adopted by the Department of Transportation hereunder. The Department of Transportation or its agents shall have the right to remove the illegal outdoor advertising at the expense of the owner if the owner fails to remove the outdoor advertising or to make it conform to the provisions of this Article or rules issued by the Department of Transportation within 30 days after receipt of such notice or five days for owners of portable outdoor advertising. The Department of Transportation or its agents may enter upon private property for the purpose of removing the outdoor advertising prohibited by this Article or rules adopted by the Department of Transportation hereunder without civil or criminal liability. The costs of removing the outdoor advertising, whether by the Department of Transportation or its agents, shall be assessed against the owner of the illegal outdoor advertising by the Department of Transportation. Any person aggrieved by the decision declaring the outdoor advertising structure illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. (1967, c. 1248, s. 9; 1973, c. 507, s. 5; 1975, c. 568, s. 12; 1977, c. 464, ss. 7.1, 32; 1999-404, s. 2.)

§136-134.1. Judicial review.

Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision under this Article, the person seeking review must file a petition in the Superior Court of Wake County within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.

The petition shall state explicitly what exceptions are taken to the decision of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the Department of Transportation. Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Department of Transportation shall transmit to the reviewing court a certified copy of the written decision.

At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the General Court of Justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:

- (1) In violation of constitutional provisions; or
- (2) Not made in accordance with this Article or rules or regulations promulgated by the Department of Transportation; or
- (3) Affected by other error of law.

The party aggrieved shall have the burden of showing that the decision was violative of one of the above.

A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the Superior Court under the rules of procedure applicable in civil cases. The appealing party may apply to the Superior Court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate

division. (1975, c. 568, s. 13; 1977, c. 464, ss. 32, 33.)

§ 136-134.2. Notification requirements.

When the Department of Transportation notifies a permit applicant, permit holder, or the owner of an outdoor advertising structure that the application is denied, the permit revoked, or the structure is in violation of this Article or rules issued pursuant to this Article, it shall do so in writing by certified mail, return receipt requested, and shall include a copy of this Article and all rules issued pursuant to this Article.

If the Department of Transportation fails to include a copy of this Article and the rules, the time period during which the permit applicant, permit holder, or owner of the outdoor advertising structure has to request a review hearing shall be tolled until the Department of Transportation provides the required materials. (1999-404, s. 3.)

§ 136-135. Enforcement provisions.

Any person, firm, corporation or association, placing, erecting or maintaining outdoor advertising along the interstate system or primary system in violation of this Article or rules adopted by the Department of Transportation shall be guilty of a Class 1 misdemeanor. In addition thereto, the Department of Transportation may seek injunctive relief in the Superior Court of Wake County or of the county where the outdoor advertising is located and require the outdoor advertising to conform to the provisions of this Article or rules adopted pursuant hereto, or require the removal of the said illegal outdoor advertising. (1967, c. 1248, s. 10; 1973, c. 507, s. 5; 1975, c. 568, s. 14; 1977, c. 464, s. 32; 1993, c. 539, s. 998; 1994, Ex. Sess., c. 24, s. 14(c); 1999-404, s. 4.)

§ 136-136. Zoning changes.

All zoning authorities shall give written notice to the Department of Transportation of the establishment or revision of any commercial and industrial zones within 660 feet of the right-of-way of interstate or primary highway systems. Notice shall be by registered mail sent to the offices of the Department of Transportation in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment. (1967, c. 1248, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1999-404, s. 10.)

§136-137. Information directories.

c. 507, s. 5; 1975, c. 568, s. 15; 1977, c. 464, s. 7.1.)

The Department of Transportation is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas and to establish information centers at safety rest areas and install signs on the right-of-way for the purpose of informing the public of facilities for food, lodging and vehicle services and of places of interest and for providing such other information as may be considered desirable. (1967, c. 1248, s. 12; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§136-138. Agreements with United States authorized.

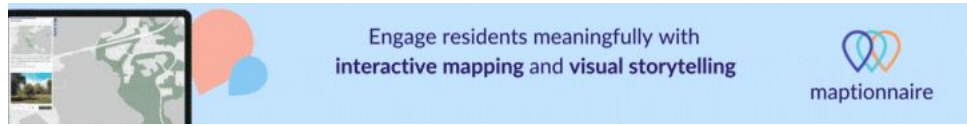
The Department of Transportation is authorized to enter into agreements with other governmental authorities relating to the control of outdoor advertising in areas adjacent to the interstate and primary highway systems, including the establishment of information centers and safety rest areas, and to take action in the name of the State to comply with the terms of the agreements. (1967, c. 1248, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§136-139. Alternate control.

In addition to any other control provided for in this Article, the Department of Transportation may regulate outdoor advertising in accordance with the standards provided by this Article and regulations promulgated pursuant thereto, by the acquisition by purchase, gift, or condemnation of easements or any other interests in real property prohibiting or controlling the erection and maintenance of advertising within 660 feet of the right-of-way line of the interstate and primary system of the State. (1967, c. 1248, s. 14; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§136-140. Availability of federal aid funds.

The Department of Transportation shall not be required to expend any funds for the regulation of outdoor advertising under this Article, nor shall the provisions of this Article, with the exception of G.S. 136-138 hereof, have any force and effect until federal funds are made available to the State for the purpose of carrying out the provisions of this Article, and the Department of Transportation has entered into an agreement with the United States Secretary of Transportation as authorized by G.S. 136-138 hereof and as provided by the Highway Beautification Act of 1965 or subsequent amendment thereto. (1967, c. 1248, s. 15; 1973,



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APA Policy Guide on Billboard Controls

Ratified by Board of Directors, Boise, Idaho, September 1989

Revised and updated, San Diego, California, April 1997

Ratified by the Board of Directors, San Diego, California, April 1997

Findings

In recent years, planners have identified sign control as one of the most important yet troublesome problems facing local governments. Because of their size and their intrusion into many rural, residential, and scenic areas, billboards are of particular concern to many communities.

Many local governments have determined that billboard controls are necessary to protect and preserve the beauty, character, economic and aesthetic value of land and to protect the safety, welfare and public health of their citizens. Over the past two decades, hundreds of cities and counties have enacted new regulations to control billboards. Yet many communities find it impossible to enforce their billboard ordinances along highly visible transportation routes because of special-interest provisions in the Intermodal Surface Transportation Efficiency Act, successor to the Federal Highway Beautification Act.

APA fully supports continuing provisions of these federal laws that require the states to control billboards adjacent to primary and interstate highways that receive federal aid, including federal highways located within cities and other local governments. The act imposes penalties on states that do not meet federal standards. States that do not comply with federal standards may lose 10 percent of their Federal highway funds. Not surprisingly, all states have legislation that implements the Federal Act.

Unfortunately, in 1978 Congress adopted an amendment to the Highway Beautification Act which ties the hands of local governments that want to remove nonconforming billboards along federal highways. Before the amendment was adopted, local governments in many states could require the removal of nonconforming billboards along federal highways, offering compensation through amortization under state and local police powers and not paying out public monies. The act now requires local governments to pay billboard owners before a nonconforming billboard can be removed.

The federal government is supposed to meet 75 percent of the cost of billboard removal, but Congress has not appropriated funds for this purpose since 1982. This is a major obstacle to billboard regulation because the removal of nonconforming billboards is essential to an effective billboard control program.

As a result, local governments face a dilemma. Although in many cases they can and do require the removal of other signs without cash compensation, they can require removal of signs along heavily traveled federal-aid highways only if they pay compensation. That creates a philosophical dilemma and, in the absence of the 75 percent federal matching funds that were originally contemplated, it creates a very real fiscal one. At the same time, new billboards continue to go up on many of the same roads where the industry insists on being paid to remove other billboards. Ironically, a setback requirement included in the act and intended to keep billboards out of highway corridors in many rural areas has simply led to

a proliferation of super-billboards just outside those corridors, further despoiling many rural routes. In short, federal intervention intended to make highway corridors more beautiful has been manipulated by special interests to make it more difficult for local governments to use their own tools to accomplish the original purposes of the Highway Beautification Act.

Policy Guide

POLICY 1. APA National and Chapters support local regulation of billboards in the context of and consistent with local comprehensive and land use plans.

POLICY 2. APA National and Chapters promote federal legislation that restores to local governments the authority to require the removal of billboards and other signs through amortization and other means consistent with the law and constitution of the particular state.

POLICY 3. APA National and Chapters support the authority of local governments to require nonconforming signs along federal highways to comply with size and height requirements without cash payments.

POLICY 4. APA Chapters promote the adoption where necessary of state legislation that expressly authorizes local governments to offer amortization as compensation for a requirement to remove nonconforming billboards and other signs within the jurisdiction of the local government.

POLICY 5. APA Chapters promote the adoption of state legislation and local ordinances halting the construction of new billboards until the federal government either appropriates sufficient funds to remove nonconforming billboards or restores the authority of local governments to remove billboards through amortization without cash payments.

POLICY 6. APA National and Chapters promote adoption of logo signs, providing service information with establishment or franchise logos and names, for exits on rural interstate, U.S., and state highways, when use of such logo signs is tied to limitations on the number, height, and size of billboards in the same area.

POLICY 7. APA National and Chapters support continuation and strengthening of federal and state legislation that allows control by local governments over the placement of new billboards.

POLICY 8. APA National and Chapters support increase of the setback exemption in the Highway Beautification Act and related provisions of ISTEA to one mile or such other distance as may be adequate to ensure that billboard companies cannot subvert the intent of the setbacks by simply installing larger signs outside the setbacks.

POLICY 9. APA National and Chapters support implementation and enforcement of restrictions on vegetation removal or trimming for the purpose of increasing the visibility of a billboard.

POLICY 10. APA National and Chapters support enabling legislation to levy user fees or taxes on billboards, which reflect the private benefit accruing to owners of billboards from the public investment in public roads, with the recommendation that such revenues be used to support highway beautification efforts.



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