



**To:** All Municipalities – Engineering District 6-0  
**From:** Roger Joseph – Right of Way Administrator  
**Date:** November 6, 2019

**Subject:** Outdoor Advertising Devices

Greetings from Pennsylvania's Department of Transportation (PennDOT) Engineering District 6-0. This letter and the enclosed materials are intended to draw your attention to the Federal Highway Administration's (FHWA) mandate for states to control outdoor advertising devices (OAD), including billboards and other signage, school bus shelters and bench advertising, along interstates and controlled state highways.

It is our hope that by reaching out to your municipality, those seeking off-premise advertising device approval, that may also require a PennDOT OAD permit, will be directed to our District Office for application processing.

PennDOT is required to exercise effective control of outdoor advertising devices under the Outdoor Advertising Control Act of 1971, 36 P.S. § 2718.101 *et seq.* and 67 Pa. Code, Chapter 445. The Act and its corresponding regulations were promulgated pursuant to the Federal Highway Beautification Act of 1965 which requires Pennsylvania to develop and maintain standards of compliance for certain signs and to remove illegal signs identified by routine surveillance.

Failure to comply with Federal requirements may result in the loss of up to 10% of the Commonwealth's annual Federal Highway apportionment.

The local municipality is often a prospective sign owner's first stop in the sign building process, as they apply for building and zoning permits. This first contact is a great opportunity to highlight the sign owner's responsibilities and requirements under state law and regulations, including but not limited to:

- The need for a PennDOT permit for an OAD displaying off-premise advertising along controlled state highways
- The prohibition against any flashing or scrolling lights and text and all full-motion video displays on an OAD
- The prohibition against placing any object in PennDOT's right of way
- PennDOT resources and contacts to assist with the OAD permitting process.

Subject to certain restrictions, outdoor advertising is permitted along certain controlled highways in commercial and industrial zoned areas. It is important to note that federal law does not recognize zoning by municipalities created for the purpose of permitting outdoor advertising devices where the primary land use in that area is not commercial or industrial, i.e. "spot zoning." See 23 C.F.R. § 750.708(d).

Enclosed for your use and to distribute to your sign permit applicants you will find:

- ❖ PennDOT's Publication 266
- ❖ 67 Pa. Code Chapter 445
- ❖ The Outdoor Advertising Control Act of 1971

Additional information can be obtained by contacting the District Outdoor Advertising Control Manager, JoAnne Parkins, at (610) 205-6521 or by email [jparkins@pa.gov](mailto:jparkins@pa.gov)

Respectfully,



Roger Joseph  
District 6-0 Right of Way Administrator

## INTRODUCTION

The Pennsylvania Department of Transportation's (PennDOT) legal responsibility for the safety of the motoring public doesn't simply begin and end "between the painted lines."

The areas beyond the highway pavement are also our concern. We must ensure that the highway right-of-way area, including the shoulder and beyond, is free and clear of any objects that might distract motorists and cause accidents. PennDOT also must uphold the laws regulating placement of outdoor advertising signs.

PennDOT is available to help you understand your role in complying with regulations, to ensure that your public or private operations are compatible with state highway law. Questions may be directed to the PennDOT Engineering District near you using the contact information in this brochure.

## HIGHWAY RIGHT-OF-WAY ENCROACHMENTS

### What is the right-of-way and how do I know how wide it is?

Right-of-way includes the land purchased by PennDOT on which a highway is built, as well as the shoulder or berms, plus any additional area needed for highway purposes. While it's often 33 feet wide, it may be much wider (120 feet or more in some cases), since it extends beyond the paved road and shoulders.

Contact the PennDOT District Office nearest you to find out what the right-of-way is for a specific location.

### What is an encroachment?

An encroachment is any object placed without permission within the legal limits of a highway right-of-way. Some examples include: signs, fences, walls and lights.

Objects generally are not permitted in the right-of-way unless the objects serve an official highway purpose (public utility poles and properly placed mailboxes are exceptions).

### Why aren't objects allowed to be placed in the right-of-way?

For two reasons: public safety and legal liability. These objects may interfere with a driver's view of other traffic, official traffic signs, and traffic signals. And accidents may result.

If a motorist collides with an illegally placed object, the owner of the object and PennDOT may be sued for the resulting injuries or damages.

### What is PennDOT's responsibility in regard to right-of-way encroachments?

PennDOT provides the owner of an encroachment with a written request to remove it. If the encroachment is not removed, PennDOT is authorized to remove it and to collect removal costs from the owner. Also, the state highway law provides a penalty for encroachment violations, upon summary conviction.

## OUTDOOR ADVERTISING SIGN CONTROL

### Why does PennDOT control outdoor advertising signs?

PennDOT is required by law to control outdoor advertising signs adjacent to interstate and federal-aid primary highways in order to receive its full share of federal highway funds, which are necessary to build and maintain Pennsylvania's roadways.

By ensuring the orderly and effective display of outdoor advertising, we remain consistent with national policy to protect the public's investment in our highways. We also protect Pennsylvania's natural beauty.

### Can my sign be placed in the highway right-of-way?

No. Only official traffic signs can be put in right-of-way areas. Other signs could distract motorists and, as with any encroachment, present a safety hazard. This includes signs placed on utility poles, and other small temporary or portable signs.

### Where can I place my sign?

Generally, signs may only be erected in commercial or industrial areas subject to limitations concerning size, spacing between signs, and lighting. Locations are more restrictive next to interstate highways.

Contact your local PennDOT Engineering District Office for details.

### Do I need a permit to erect a sign? What restrictions are there for signs advertising a business?

Whether you need a permit for your sign depends on whether the sign is an on-premise or off-premise sign.

On-premise signs, which advertise products or services available on the property where the sign is located, have few restrictions. They generally do not require an application or permit; however, if such a sign will be located further than 50 feet from the building or parking lot, other factors may need to be considered. You should check with PennDOT first.



Off-premise signs are those which advertise something not sold on the property where the sign is located. These signs DO require permits, and must meet size, lighting and spacing requirements. Before you erect an off-premise commercial advertising sign, an application must be submitted to a PennDOT District Engineering Office and a permit obtained. An annual permit fee is also required.

**If my sign complies with state law, must it also comply with local laws?**

Yes. Before PennDOT will issue a sign permit, the proposed sign must also meet all applicable county and municipal requirements.

**Can I erect a sign with flashing lights or arrows?**

No. Such signs are prohibited because they could distract motorists and pose a safety hazard.

**Are electronic message signs allowed?**

Yes. Signs with an electronic message display may advertise activities and products, and also public service messages. But, the message or lights may not be animated, flash or appear to move.

**Who is responsible for an illegal sign?**

The person who erects or maintains an illegal sign, as well as the individual who allows an illegal sign to exist on their property, is responsible for the sign.

**Do I need a permit for “For Sale/Lease” signs, yard sale signs, political signs, etc.?**

Small temporary signs such as those noted above which are placed on private property (off the highway right-of-way) with the property owner’s permission, are generally regarded as on-premise signs and therefore do not require a permit. They should be removed immediately after the event.

**What is PennDOT’s responsibility in regard to an illegal sign?**

PennDOT is obligated by law to remove illegal signs. PennDOT will first send a written request to the responsible person(s) to remove the sign. If not removed, PennDOT is authorized by law to enter private property to remove the illegal sign and to collect the costs of removal from the responsible person(s). The law also provides a \$500 per day fine for the person(s) responsible for the illegal sign, upon summary conviction.

**How can I get more information about right-of-way encroachments and control of outdoor advertising signs?  
...contact the PennDOT District Engineering Office closest to you!**

- Engineering District 1** - Oil City (Crawford, Forest, Erie, Mercer, Venango & Warren counties) (814) 678-7182
- Engineering District 2** - Clearfield (Centre, Clearfield, Clinton, Cameron, McKean, Potter, Mifflin, Juniata & Elk counties) (814) 765-0447
- Engineering District 3** - Montoursville (Columbia, Lycoming, Montour, Northumberland, Snyder, Sullivan, Tioga, Union & Bradford counties) (570) 368-4338
- Engineering District 4** - Dunmore (Lackawanna, Luzerne, Pike, Susquehanna, Wayne & Wyoming counties) (570) 963-3192
- Engineering District 5** - Allentown (Berks, Carbon, Lehigh, Monroe, Northampton & Schuylkill counties) (610) 871-4176
- Engineering District 6** - King of Prussia (Bucks, Chester, Delaware, Montgomery & Philadelphia counties) (610) 205-6521
- Engineering District 8** - Harrisburg (Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry & York counties) (717) 772-2171
- Engineering District 9** - Hollidaysburg (Bedford, Blair, Fulton, Huntingdon, Cambria & Somerset counties) (814) 317-1674
- Engineering District 10** - Indiana (Armstrong, Butler, Clarion, Indiana & Jefferson counties) (724) 357-2838
- Engineering District 11** - Pittsburgh (Allegheny, Beaver & Lawrence counties) (412) 429-4848
- Engineering District 12** - Uniontown (Fayette, Greene, Washington & Westmoreland counties) (724) 439-7354

This brochure is not intended to replace the law of Pennsylvania relating to right-of-way encroachment; nor is it intended to replace the Outdoor Advertising Control Act of 1971, Act. No. 160, P.L. 596, (36 P.S. Section 2718.101 et seq.) or the Regulations, Title 67 PA Code, Chapter 445, Outdoor Advertising Devices. A copy of the Outdoor Advertising Control Act and regulations may be requested from any District Engineering Office.



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## CHAPTER 445. OUTDOOR ADVERTISING DEVICES

Sec.

- 445.1. Purpose.
- 445.2. Definitions.
- 445.3. Directional and official signs.
- 445.4. Signs in zoned or unzoned commercial or industrial areas.
- 445.5. On-premise signs.
- 445.6. Permits.
- 445.7. Restoration of damaged or partially destroyed nonconforming signs.
- 445.8. Abandoned signs.
- 445.9. Erection, maintenance and repair of signs.

### Authority

The provisions of this Chapter 445 issued under section 6 of the Outdoor Advertising Control Act of 1971 (36 P. S. § 2718.101), unless otherwise noted.

### Source

The provisions of this Chapter 445 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845, unless otherwise noted.

### Notes of Decisions

An assertion that a sign owner was improperly subjected to selective administrative enforcement of the Outdoor Advertising Control Act of 1971 (36 P. S. § § 2718.101—2718.115) and its corresponding regulations found at this chapter may not be raised before the court if not raised and developed at a hearing before the Department which petitioners failed to attend and communicated to the Department their intention to abandon the matter. *Fritz v. Department of Transportation*, 468 A.2d 538 (Pa. Cmwlth. 1983).

#### § 445.1. Purpose.

This chapter is promulgated for the purpose of establishing standards, including criteria for size, spacing and lighting, of outdoor advertising devices consistent with the act, and 23 U.S.C.A. (relating to highways) and the Federal regulations promulgated thereunder;

and to establish a system for the issuing of permits for the outdoor advertising devices, as required by the act.

### Source

The provisions of this § 445.1 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

### Notes of Decisions

#### *Highway Ramps*

Even though the advertising device was not visible from the entrance/exit ramps, because it was located within 500 feet of a ramp, it was prohibited and the Department of Transportation appropriately denied the advertising permit. *Martin Media v. Department of Transportation*, 661 A.2d 479 (Pa. Cmwlth. 1995); appeal denied 672 A.2d 312 (Pa. 1995).

### § 445.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Outdoor Advertising Control Act of 1971 (36 P. S. § § 2718.101—2718.115).

*Advertising device*—A sign as defined in this chapter.

*Area clearly established by law as industrial or commercial*—A zoned commercial or industrial area.

*Back to back sign*—A single structure having two parallel and directly opposite faces, oriented in opposite directions and spaced no more than 10 feet apart.

*Centerline of the highway*—A line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the center-line of the main-traveled way of a nondivided highway.

*Commercial or industrial activities*—Those activities generally recognized as commercial or industrial by zoning laws in this Commonwealth, except that none of the following activities shall be considered commercial or industrial:

- (i) Outdoor advertising signs.
- (ii) Agricultural, forestry, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.
- (iii) Activities not visible from the main-traveled way.
- (iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings.

*Department*—The Department of Transportation of the Commonwealth.

*Directional and official signs and notices*—Only official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs.

*Directional informational signs*—Signs which existed on June 1, 1972, and contained specific directional information of a nature not defined under the directional and official signs and notices or the directional signs categories. These signs shall be limited to those devices which provide specific directional information for the traveling public to the following facilities: food services, lodging, gasoline and automotive services, truck stops, campgrounds, resorts, tourist attractions, natural wonders, scenic and historical sites and areas of outdoor recreation.

*Entrance roadway*—A public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an interstate or primary highway from the general road system, irrespective of whether traffic may also leave the main-traveled way by the road or turning roadway.

*Erect*—To construct, build, assemble, place, affix, attach, create, paint, draw or bring into being or establish. The term does not include the foregoing activities when performed as an incident to the change of advertising message or customary maintenance and repair of a sign or sign structure. Customary maintenance and repair does not include major physical changes such as increase in size or height or addition of or change in lighting.

*Exit roadway*—A public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an interstate or primary highway to reach the general road system, irrespective of whether traffic may also enter the main-traveled way by the road or turning roadway.

*Federal or State law*—A Federal or State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State or Federal agency or a political subdivision or school district under a Federal or State constitution or statute.

*Freeway*—A limited access highway.

*Highway, road or street*—A public right-of-way improved primarily for vehicles. Unimproved rights-of-way, private roads and drives are not to be regarded as highways, roads or streets.

*Incorporated municipalities*—Cities of all classes, boroughs, towns and first-class townships.

*Information center*—An area or site established for the purpose of informing the public of places of interest within this Commonwealth and providing other information that the Secretary may consider desirable.



*Interstate system*—That portion of the National system of interstate and defense highways located within this Commonwealth, as officially designated, or as may hereafter be so designated, by the Secretary and approved by the United States Secretary of Transportation, under 23 U.S.C.A. § 103 (relating to highways).

*Limited access highway*—A public highway to which owners or occupants of abutting property or the traveling public have no right of ingress or egress to, from or across the highway, except as may be provided by the authorities responsible therefore.

*Maintain*—To allow to exist.

*Main-traveled way*—The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways or parking areas.

*Nonconforming sign*—A sign which was legally erected but which does not conform to the requirements of the act.

*Official signs and notices*—Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

*Parkland*—A publicly-owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

*Premises*—The property upon which the activity is conducted as determined by physical facts rather than property lines. It is the land occupied by the buildings or other physical uses that are necessary or customarily incident to the activity, including such open spaces as are arranged and designed to be used in connection with the buildings or uses. The following are not considered to be a part of the premises on which the activity is conducted, and any signs located on the land are to be considered off-premise advertising:

(i) Land which is not used as an integral part of the principal activity, including land which is separated from the activity by a roadway, highway or other obstruction, and not used by the activity; and extensive undeveloped highway frontage contiguous to the land actually used by a commercial facility, even though it might be under the same ownership.

(ii) Land which is used for, or devoted to, a separate purpose unrelated to the advertised activity.

(iii) Land which is more than 100 feet from the principal activity, and in closer proximity to the highway than to the principal activity, and developed or used only in the area of the sign site or between the sign site and the principal activity and whose purpose



is for advertising purposes only. In no event may a sign site be considered part of the premises on which the advertised activity is conducted if the site is located on a narrow strip of land which is nonbuildable land, or is a common or private roadway, or is held by easement or other lesser interest than the premises where the advertised activity is located.

*Primary system*—That portion of connected main highways located within this Commonwealth which now or hereafter may be designated officially by the Secretary and approved by the Secretary of Transportation of the United States under 23 U.S.C.A.

*Public service signs*—Signs located on school bus stop shelters, which signs:

- (i) Identify the donor, sponsor or contributor of the shelters.
- (ii) Contain public service safety slogans or messages, which shall occupy not less than 50% of the area of the sign.
- (iii) Contain no other message.
- (iv) Are located on school bus shelters which are authorized or approved by city, county or State law, regulation or ordinance and at places approved by the city, county, State or other agency controlling the highway involved.
- (v) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

*Public utility signs*—Warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

*Route*—Highway, or part thereof, or combination of highways designated by the same letter, name or number (for example, I-80, US 322, PA 309, Susquehanna Trail) under the provisions of section 204 of the State Highway Law (36 P. S. § 670-204), and commonly known as a numbered traffic route.

*Rural area*—An area not included in an urban area.

*Safety rest area*—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.

*Scenic area*—An area of particular scenic beauty or historical significance as determined by the Federal, State or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of scenic beauty.

*Secretary*—The Secretary of the Department of Transportation of the Commonwealth.

*Service club and religious notices*—Signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious

services, which signs do not exceed 8 square feet in area.

*Sign*—An outdoor sign, display, light, figure, painting, drawings, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform. The word, “sign,” as used in this chapter is synonymous with the phrase, “outdoor advertising device,” as defined in the act.

*Trade name*—Brand name, trademark, distinctive symbol or other similar device or thing used to identify particular products or services.

*Traveled way*—The portion of a roadway for the movement of vehicles, exclusive of shoulders.

*Turning roadway*—A connecting roadway for traffic turning between two intersecting legs of an interchange.

*Unzoned commercial or industrial area*—An area which is not zoned by State or local law, regulation or ordinance and on which there is located one or more commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of the activity. Unzoned commercial and industrial areas do not include land on the opposite side of the highway from the activities except that on two or three-lane noncontrolled access highways the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity, if, in the opinion of the Secretary, the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable, and provided that the land on the opposite side of the highway has not been designated scenic by the Department. In no event may the unzoned commercial or industrial area be located on both sides of the highway. Measurements shall be from the outer edges of the regularly used building, parking lots, storage or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of the pavement of the highway.

*Urban area*—An urbanized area or an urban place designated by the United States Bureau of Census as having a population of 5,000 or more and whose boundaries have been approved by the Secretary of the United States, Department of Transportation.

*V-type sign*—A single structure having two faces in the shape of the letter “V” when viewed from above, with the faces oriented in opposite directions.

*Visible*—Capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

*Zoned commercial or industrial area*—An area which is reserved for business, industry, commerce, trade or other business of any type or category under a State or local zoning law, ordinance or regulation.

#### Source

The provisions of this § 445.2 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267.

### Notes of Decisions

#### *Construction*

The Department of Transportation's interpretation of what constitutes an "on-premises" sign is clearly erroneous, as it is inconsistent with the express provisions of the definition of "premises." A regulation must be construed, if possible, to give effect to all of its provisions, and every word is to be given meaning and not treated as surplusage. *Highway News, Inc. v. Department of Transportation*, 789 A.2d 802 (Pa. Cmwlth. 2002).

#### *Nonconforming*

In determining whether less than 50% of the storm damaged nonconforming sign remained "intact," thus precluding the sign owner from repairing or rebuilding the sign located in the residentially zoned area, the Department improperly expanded the meaning of "intact" to include the concept of "upright" and "in place." *Martin Media v. Department of Transportation*, 641 A.2d 630 (Pa. Cmwlth. 1994).

#### *Presumption of Validity*

Defining "zoned commercial or industrial area" as an area clearly established as industrial or commercial was not abuse of discretion by the Department of Transportation. Generally, in the absence of such abuse of discretion, a regulation promulgated by a State agency is presumed valid. *Kasha v. Department of Transportation*, 782 A.2d 15 (Pa. Cmwlth. 2001).

### **§ 445.3. Directional and official signs.**

(a) *Application.* This section applies to directional and official signs and notices which are erected and maintained within 660 feet of the nearest edge of the right-of-way of the interstate and Federal aid primary system and which are visible from the main-traveled way of the system and those signs located more than 660 feet from the nearest edge of the right-of-way and visible as aforesaid if located outside of an urban area and erected with the purpose of its message being read from the main traveled way.

(b) *Standards for directional signs.* The following apply only to directional signs:

(1) *General.* The following signs are prohibited:

(i) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(ii) Signs which obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic.

(iii) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(iv) Obsolete signs.

(v) Signs which are structurally unsafe or in disrepair.

(vi) Signs which move or have any animated or moving parts.

(vii) Signs located in parklands or scenic areas.

(2) *Size.* Size of the sign shall conform with the following:

(i) A sign may not exceed the following limits:

(A) Maximum area—150 square feet.

(B) Maximum height—20 feet.

(C) Maximum length—20 feet.

(ii) Dimensions include border and trim, but exclude supports.

(3) *Lighting.* Signs may be illuminated, subject to the following:

(i) Signs which contain, include or are illuminated by a flashing, intermittent or moving light are prohibited.

(ii) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at a portion of the traveled way or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle is prohibited.

(iii) A sign may not be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

(4) *Spacing.* Requirements for spacing shall be as follows:

(i) Each location of a directional sign shall be approved by the Department.

(ii) A directional sign may not be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(iii) A directional sign may not be located within 2,000 feet of a safety rest area, parkland or scenic area.



(iv) Two directional signs facing the same direction of travel may not be spaced less than 1 mile apart.

(v) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(vi) Signs located adjacent to the interstate system shall be within 75 air miles of the activity.

(vii) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(5) *Message content.* The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number or exit number. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs is prohibited.

(6) *Selection methods and criteria.* Selection methods and criteria shall include:

(i) Privately-owned activities or attractions eligible for directional signing are limited to the following: natural phenomena, scenic attractions; historic, educational, cultural, scientific and religious sites; and outdoor recreational areas.

(ii) To be eligible, privately owned attractions or activities shall be nationally or regionally known, and of outstanding interest to the traveling public.

#### Source

The provisions of this § 445.3 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

#### Cross References

This section cited in 67 Pa. Code § 445.6 (relating to permits).

#### **§ 445.4. Signs in zoned or unzoned commercial or industrial areas.**

(a) *Application.* This section applies to signs erected on or after December 15, 1971, as follows:

(1) In zoned or unzoned commercial or industrial areas along those portions of the interstate system constructed on right-of-way any part of the width of which was acquired on or before July 1, 1956.

(2) In areas zoned commercial or industrial along the interstate system and lying within the boundaries of an incorporated municipality as such boundaries existed on September 21, 1959, or in another area along the interstate system which, as of September 21, 1959, was clearly established by law as industrial or commercial.

(3) In zoned or unzoned commercial or industrial areas along the primary system.

(b) *Maintenance.* A sign may not be erected or maintained inconsistent with the following criteria:

(1) *Size of signs.* Size of signs shall include:

(i) The maximum area for one sign shall be 1200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of a border and trim but excluding the base or apron, supports and other structural members.

(ii) The area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire sign.

(iii) A sign structure may contain one or two signs per facing and may be placed double-faced, back to back or V-type.

(iv) Signs which exceed 600 square feet in area may not be double-faced (abutting and facing the same direction).

(2) *Spacing of signs.* Spacing of signs shall include the following:

(i) Along the interstate system and limited access highways on the primary system, no two sign structures may be spaced less than 500 feet apart; and outside the boundaries of cities of all classes and boroughs, no structure may be erected adjacent to or within 500 feet of an interchange or safety rest area, measured along the interstate or limited access primary from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(ii) Along nonlimited access highways on the primary system, no two structures shall be spaced less than 300 feet apart if outside cities of all classes and boroughs, nor less than 100 feet apart if within the cities and boroughs.

(iii) These spacing provisions do not apply to sign structures separated by a building or other obstruction in such a manner that only one sign facing located within these spacing distances is visible from the highway at any one time.

(iv) Official and on-premise signs may not be counted nor may measurements be made from them for purposes of determining spacing requirements.

(v) The distance between sign structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along the same side of the traveled way.

(3) *Lighting of signs.* The lighting of signs includes the following:

(i) A sign may not be permitted which is not effectively shielded so as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or primary systems or which is of such intensity or brilliance as to cause glare or to impair the vision of the driver of a vehicle, or which interferes with a driver's operation of a motor vehicle.

- (ii) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal.
  - (iii) Lighting of signs shall be subject to other provisions relating to lighting of signs along highways under the jurisdiction of the Department.
  - (iv) Signs which contain, include or are illuminated by a flashing, intermittent or moving light or lights shall be prohibited, except those giving public service information such as time, date, temperature, weather or similar information.
- (4) *General provisions.* General provisions shall comply with the following:
- (i) Signs may not be erected or maintained in such a manner as to obscure or otherwise physically interfere with an official traffic sign, signal or device or to obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.
  - (ii) Signs may not be erected or maintained which imitate or resemble any official traffic sign, signal or device.
  - (iii) Signs may not be erected or maintained upon trees or painted or drawn upon rocks or natural features.
  - (iv) Signs which are structurally unsafe may not be erected or maintained. If a sign is determined by the Department to be structurally unsafe, a reasonable time will be accorded the owner to make necessary repairs. If necessary repairs are not made within a reasonable time following notice given by the Department, the signs will be subject to removal by the Department under section 10 of the act (36 P. S. § 2718.110).

#### Source

The provisions of this § 445.4 adopted May 12, 1972, effective May 18, 1972, 2 Pa.B. 845; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

#### Notes of Decisions

##### *Exceptions*

Advertiser's double-faced sign advertising off-premises activity within 500 feet of an interchange was not exempted from the prohibition of sign under this section because it was only visible to a motorist on one side of the road. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Advertiser's sign structure on its property advertising on-premise activity was within the exception of prohibiting the advertisement of off-premise activity within 500 feet of an interchange. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

The Department's interpretation of "the exit or entrance," in this section to mean all entrances or exits from the sign was upheld because the petitioner could not prove the

interpretation to be plainly erroneous. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Petitioner's sign structure on its property advertising on-premise activity was found to be within the exception of prohibiting the advertisement of off-premises activity within 500 feet of an interchange. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

Petitioner's assertion that its double-faced sign advertising off-premises activity within 500 feet of an interchange should be exempted from the prohibition of sign under this section because it was only visible to a motorist on one side of the road was denied as the petitioner failed to prove that the Department's interpretation was plainly erroneous. *George Washington Motor Lodge Co. v. Department of Transportation*, 545 A.2d 493 (Pa. Cmwlth. 1988).

#### *Pavement Defined*

Although the word "pavement" is not defined in the Outdoor Advertising Control Act of 1971 or the Pennsylvania Administrative Code, the Department of Transportation properly relied upon "pavement" to be the paved portion of the roadway and exit, exclusive of the shoulder, as distinguished from the markings painted on the paved portion. *Media v. Department of Transportation*, 700 A.2d 563 (Pa. Cmwlth. 1997).

#### *Rational Basis*

The restriction which limits the use of flashing, intermittent or moving lights to public service information is consistent with the legislative intent to limit advertising along roadways. *Cortel v. Department of Transportation*, 821 A.2d 173 (Pa. Cmwlth. 2003).

### **Cross References**

This section cited in 67 Pa. Code § 445.6 (relating to permits).

### **§ 445.5. On-premise signs.**

(a) *Application.* This section applies to signs which:

- (1) Advertise the sale or lease of the premises on which they are located.
- (2) Advertise activities conducted on the premises on which they are located.

(b) *General provisions.* An on-premise sign may not be erected or maintained, in a manner inconsistent with the following criteria:

- (1) A sign may not be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles an official traffic sign, signal or device.
- (2) A sign may not be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.



(3) A sign may not be permitted which contains, includes or is illuminated by a flashing, intermittent or moving light or lights.

(4) A lighting may not be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(5) A sign may not be permitted which moves or has any animated or moving parts.

(6) A sign may not be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(c) *Restrictions along interstate highways.*

(1) Not more than one sign advertising the sale or lease of the same premises may be permitted to be visible to traffic proceeding in any one direction on an interstate highway.

(2) Not more than one sign, visible to traffic proceeding in any one direction on any interstate highway and advertising activities being conducted upon the premises where the sign is located, may be permitted more than 50 feet from the advertised activity.

(3) A sign, except a sign not more than 50 feet from the advertised activity, that displays a trade name which refers to or identifies a service rendered or product sold, used or otherwise handled off the premises, may not be permitted unless the name of the activity conducted on the premises is displayed as conspicuously as the trade name; provided, however, that this section does not apply to trade names which identify or characterize:

- (i) Public places operated by Federal, State or local governments.
- (ii) Natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation.
- (iii) Places for camping, lodging, eating and vehicle service and repair.
- (iv) Vehicle service, equipment, parts, accessories, fuels, oils or lubrications being offered for sale at a place of the type listed in subparagraphs (i)—(iii).

(4) If a sign which has an area of 6 square feet or which is in excess of 3 feet in any dimension consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered outdoor advertising and not an on-premise sign; except that this provision does not apply to trade names which identify or characterize public places operated by Federal, State or local governments; natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation; or places for camping, lodging, eating and vehicle service and repair; or to trade names which identify vehicle service, equipment, parts, accessories, fuels, oils and lubrications being offered for sale at such a place.

(5) A sign is not permitted to exceed 20 feet in length or height, or 150 square feet in area, including border and trim but excluding supports, except signs not more than 50 feet from, and advertising activities being conducted upon, the premises where the sign is located.

#### Source

The provisions of this § 445.5 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

#### Cross References

This section cited in 67 Pa. Code § 445.6 (relating to permits).

#### § 445.6. Permits.

(a) *Applicability.* An annual permit shall be required for signs regulated under the act and this section, including:

- (1) Directional and official signs. Reference should be made to § 445.3 (relating to directional and official signs).
- (2) Signs in zoned or unzoned commercial or industrial areas. Reference should be made to § 445.4 (relating to signs in zoned or unzoned commercial or industrial areas).
- (3) On premise signs along the interstate system. Reference should be made to § 445.5 (c) (relating to on-premise signs).
- (4) Signs prohibited to be erected or maintained under section 4 of the act (36 P. S. § 2718.104), until such time as each sign has been removed; provided, however, that a permit may not be required for signs in commercial or industrial zones, certified by the Secretary to the Secretary of Transportation of the United States under section 5(b) and (d) of the act (36 P. S. § 2718.105(b) and (d)), if the local political subdivision has a legally established and operating procedure for issuing the permits.

(b) *Permit applications.* Permit applications shall be completed as follows:

- (1) Application for a permit for a sign shall be made at the Department district office having jurisdiction over the sign location.
- (2) Application shall be made on a form to be provided by the Department, and shall contain the following information and documentation:
  - (i) The name and address of the sign owner and the land owner, together with an affidavit attesting that there is a valid lease agreement between them for the land on which the sign is to be located, or that the sign owner is also the land owner.
  - (ii) If the sign is an existing sign, the affidavit shall contain the date of erection of the sign or a statement that the sign was erected on or before October 22, 1965.

(iii) A drawing to scale, showing:

(A) the location of the sign with reference to the highway, indicating station and distance from center line, right of way line, fence or edge of pavement.

(B) For a directional sign as provided in § 445.3 or a sign in a zoned or unzoned commercial or industrial area as provided in § 445.4, the distance along the highway in each direction to the nearest sign in the same classification.

(C) For a sign in an unzoned commercial or industrial area as provided in § 445.4 (a)(1) and (3) or an on-premise sign along the interstate system as provided in § 445.5, the commercial or industrial activity and the distance from the nearest edge of such activity to the sign.

(iv) A drawing to scale, showing all dimensions of the sign. For a directional sign or an on-premise sign along the interstate system advertising activities being conducted on the real property and located more than 50 feet from the advertised activity, the drawing shall also contain an accurate representation of the advertising or informative contents of the sign.

(3) Each application shall be accompanied by the appropriate annual fee, as follows:

(i) Ten dollars if the sign area does not exceed 300 square feet.

(ii) Twenty dollars if the sign area exceeds 300 square feet but does not exceed 600 square feet.

(iii) Thirty dollars if the sign area exceeds 600 square feet.

(iv) The total fee for all on-premise signs along the interstate system advertising activities being conducted on the real property by a single person, partnership, corporation or other entity and located no more than 50 feet from the advertised activity shall be \$30.

(C) *Renewal of permits.* Renewal of permits shall be completed as follows:

(1) If the information provided in the original application is still valid a renewal application need contain only the following information:

(i) Name and address of applicant.

(ii) Original permit number.

(iii) Brief indication of location of sign, including county, L.R. and station.

(2) Renewal applications shall be accompanied by the appropriate annual fee.

(3) If there is a change in ownership, leasing arrangement, location or dimensions of a sign, or in advertising or informative contents of a directional sign or an on-premise sign along the interstate system, advertising activities being conducted on the real property and located more than 50 feet from the advertising activity, a new permit shall be

required. Unchanged information and documentation may be incorporated into the new application by reference to the original permit number.

(4) Upon issuance of the permit the permittee shall:

(i) Attach the permit to the front of the structure on the side closest to highway or in lieu thereof, the permittee may paint, with materials of a permanent nature, the number of the permit issued by the Department in a minimum size of 2 inches. The painting shall be readily discernible. The permit issued shall be retained by the permittee and be made available for inspection by the Department during normal business hours.

(ii) Tags issued by the Department shall be of a permanent nature and when installed on the sign shall remain on the sign as long as the sign remains validly in existence. If the tag becomes illegible or is removed it shall be the responsibility of the permittee to apply for and procure a replacement and attach it to the sign within 15 days of notice by the Department of the existing condition.

(A) The cost of a replacement tag shall be equal to that of the cost of the original tag.

(B) Failure to obtain a replacement tag within the time period prescribed shall be considered abandonment of the sign.

(d) *Priorities.* Priorities shall include the following:

(1) *Directional signs.* As provided in § 445.3, where issuance of permits for two or more directional signs would conflict with the applicable spacing provisions, permits will be issued in the following order of priority:

(i) An existing sign which is in conformance with Federal and State law and this chapter either upon application for an initial permit or for renewal of a previous permit.

(ii) A sign of the Department.

(iii) A sign of another Department or agency of the Commonwealth.

(iv) A sign of a local governmental unit or an agency thereof.

(v) A sign of the United States Government or an agency thereof.

(vi) A sign of another public agency.

(vii) A sign of a private nonprofit organization.

(viii) A sign of a private profit-making organization or individual.

(2) *Signs in zoned or unzoned commercial or industrial areas.* As provided in § 445.4, where issuance of permits for two or more signs in zoned or unzoned commercial or industrial areas would conflict with the applicable spacing provisions, permits will be issued in the following order of priority:



(i) An existing sign which is in conformance with Federal and State law and this chapter, either upon application for an initial permit or for renewal of a previous permit.

(ii) A sign deemed by the Secretary to be in the specific interest of the traveling public, such as signs pertaining to public places owned or operated by Federal, State or local governments or their agencies, publicly or privately owned natural phenomena; historic, cultural, scientific, educational and religious sites; areas of natural scenic beauty or naturally suited for outdoor recreation; vehicle services, eating places or lodging.

(iii) Another sign which is in conformance with Federal and State law and this chapter.

(3) The priorities set forth in paragraphs (1) and (2) shall be based on the informative contents of the sign rather than the ownership thereof.

(4) In the case of a conflict among two or more signs with the same priority, a permit will be issued for the sign which the Secretary determines is most in the interest of the traveling public, or, at the option of the Secretary, the sign for which application was first received by the Department.

(e) *Revocation of permits.* Revocation of permits includes the following:

(1) Permits shall be subject to revocation upon 15 days written notice for violation of the act or this chapter, or upon change of information provided in the application.

(2) Permits for signs which are prohibited to be erected or maintained under section 4 of the act (36 P. S. § 2718.104) shall be revocable upon 30 days written notice.

(3) Revocation of a permit shall not be grounds for refund of the permit fee.

#### **Source**

The provisions of this § 445.6 amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267; amended May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267.

#### **Notes of Decisions**

##### *Application Contents*

It is reasonable for the Department of Transportation to ask in the application form if signs will be in a Cotton or Kerr Area. *Philadelphia Outdoor Advertising v. Department of Transportation*, 690 A.2d 789 (Pa. Cmwlth. 1997).

##### *Revocation of Permits*

The changing of an exterior sign which was a nonconforming sign from a wooden frame supported by wooden stands to one with a metal frame and catwalk supported by a single steel post is a "structural improvement" and supported finding that signs had been erected after the effective date of the outdoor advertising control act and justified

revocation of the sign permits. *Park Outdoor Advertising Co. v. Department of Transportation*, 485 A.2d 864 (Pa. Cmwlth. 1984).

#### *Timing Sequence*

The company's failure to challenge the Department of Transportation's time-stamping of the other company's application one minute earlier than its own application, even though representatives of both companies were present at the same time, until after its application for signage along the highway was denied constituted a waiver of its right to challenge the timing sequence which adversely affected its application. *Morgan Signs, Inc. v. Department of Transportation*, 676 A.2d 1284 (Pa. Cmwlth. 1996).

### **§ 445.7. Restoration of damaged or partially destroyed nonconforming signs.**

(a) *Application.* This section applies to signs erected or controlled under this chapter or the act.

(b) *Nonconforming signs.* Nonconforming signs shall conform with the following:

(1) If a sign is damaged or destroyed as a result of tortious conduct such as vandalism, the sign may be repaired or replaced by the sign owner.

(2) If a sign is damaged as a result of natural disaster or nontortious conduct so that 50% or more of its value remains intact, the sign may be repaired by the sign owner.

(3) The following apply to signs damaged or destroyed as provided in paragraphs (1) and (2):

(i) Determination of the value of the sign and the damage shall be made by the Department.

(ii) Replaced or repaired signs shall be of equal or lesser dimensions and constructed of the same or less durable material than the sign being replaced or repaired and shall contain no improvements or additions.

(iii) If a sign is replaced the replacement sign shall remain at the same location.

(iv) If a sign is destroyed or damaged as a result of natural disaster or other nontortious conduct so that less than 50% of the sign remains intact, the sign may be repaired or replaced only in compliance with the provisions of this chapter. Determination of the value of the sign and the damage shall be made by the Department.

(v) Damaged or destroyed signs not replaced or repaired within 60 days of notice from the Department shall be considered abandoned.

#### **Source**

The provisions of this § 445.7 adopted May 12, 1972, effective May 13, 1972, 2 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534.

## Notes of Decisions

### *Natural Disaster*

In determining whether less than 50% of the storm damaged nonconforming sign remained “intact”, thus precluding the sign owner from repairing or rebuilding the sign located in the residentially zoned area, the Department of Transportation improperly expanded the meaning of “intact” to include the concept of “upright” and “in place.” *Martin Media v. Department of Transportation*, 641 A.2d 630 (Pa. Cmwlth. 1994).

The hearing officer properly interpreted this section to provide that a nonconforming outdoor sign damaged in excess of 50% of its value may not be replaced unless the replacement sign is in compliance with this chapter, that is, be conforming. *Miller's Smorgasbord v. Department of Transportation*, 590 A.2d 854 (Pa. Cmwlth. 1991).

### *Nonconforming Use*

Sign owners violated the nonconforming use requirement of this section, that repaired signs must be of equal or lesser dimensions, by completely removing an old sign and replacing it with one constructed out of steel, not wood, and by adding halogen lighting. *Keystone Outdoor Advertising v. Department of Transportation*, 687 A.2d 47 (Pa. Cmwlth. 1996).

### *Owner's Duty*

Where a sign owner failed to provide the Department of Transportation with repair invoices or billings, the Department was unable to make a determination as to replacement cost under subsection (b)(2); therefore, the Department's determination that the sign had been abandoned was justified. *Kasha v. Department of Transportation*, 782 A.2d 15 (Pa. Cmwlth. 2001).

### *Repairing Signs*

By completely removing the old nonconforming sign following storm damage and replacing it with one constructed out of steel, not wood, and by adding halogen lighting, Appellants violated this regulation's requirement that repaired signs must be of equal or lesser dimensions, constructed of the same or less durable material than the sign being repaired and contain no improvements or additions. *Keystone Outdoor Advertising v. Department of Transportation*, 687 A.2d 47 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 597 (Pa. 1997).

## **§ 445.8. Abandoned signs.**

(a) *Application.* This section applies to signs erected or controlled under this chapter or the act.

(b) *Abandoned sign defined.* The following signs shall be presumed to be abandoned:

(1) A sign which has remained without bona fide advertising for 12 months or which has been without a current lease or license from the landowner for more than 90 days.

(2) A sign other than a nonconforming sign which requires maintenance or repair in excess of 25% of the replacement cost of the sign. Determination of the replacement cost of the sign and of the amount of required maintenance or repair shall be made by the Department after consultation with the sign owner.

(3) A sign for which a valid tag permit under § 445.6(b) and (c) (relating to permits) was not issued.

(4) A sign considered abandoned under § 445.7(b) (relating to restoration of damaged or partially destroyed nonconforming signs).

(5) A nonconforming sign, otherwise compensable under section 9 of the act (36 P. S. § 2718.109), which since the date on which the sign became eligible for compensation, has been enlarged, illuminated or structurally improved in any manner (except normal repairs) or the location of which has been changed.

(6) A sign, the permit for which has been revoked under the act or its amendments or this chapter.

(c) *Removal of abandoned signs.* Signs that are abandoned shall be removed by the persons responsible for the erection or maintenance thereof within 30 days after notice by the Department of the abandonment. Upon 30 days notice the Department may remove signs that are abandoned at the expense of those responsible for the erection or maintenance of the signs.

#### Source

The provisions of this § 445.8 adopted May 21, 1976, effective May 22, 1976, 6 Pa.B. 845; renumbered September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended January 19, 1979, effective January 20, 1979, 9 Pa.B. 267.

#### Notes of Decisions

The changing of an exterior sign which was a nonconforming sign from a wooden frame supported by wooden stands to one with a metal frame and catwalk supported by a single steel post is a "structural improvement" justifying the Department's determination that the conforming sign has been abandoned according to subsection (b)(5). *Park Outdoor Advertising Co. v. Department of Transportation*, 485 A.2d 864 (Pa. Cmwlth. 1984).

#### Cross References

This section cited in 67 Pa. Code § 445.9 (relating to erection, maintenance and repair of signs).

#### **§ 445.9. Erection, maintenance and repair of signs.**

(a) *Application.* This section applies to signs erected or controlled under this chapter or the act.



(b) *Use of limited access highway right-of-way prohibited.* A sign may not be erected, maintained or repaired from a portion of a limited access highway right-of-way. Sign owners or others responsible for the erection, maintenance or repair of a sign shall be required to perform these functions from areas maintained or controlled by them; nor may a vehicle be used in conjunction with an activity, be parked or stood within the limited access highway right-of-way.

(c) *Preservation of vegetation.* Vegetation located in the highway right-of-way may not be destroyed, damaged, removed or disturbed in maintaining, repairing or erecting a sign.

(d) *Penalty for violation of section.* Penalty for violation of this section shall comply with the following:

(1) *Penalty.* Penalty shall be as follows:

(i) Except as provided in paragraph (2), if a landowner or sign owner or their employees or agents violate a provision of this section, the permit for the sign shall be revoked and the sign owner shall be required to remove the sign in the manner set forth in § 445.8(c) (relating to abandoned signs).

(ii) If a sign permit is revoked under this section, a permit will not be issued to the sign owner for a sign within 500 feet of the original sign; nor will a permit be issued to another person for a sign within 500 feet of the original sign for 1 year from the removal of the original sign.

(2) *Payment in lieu of removal.* Payment in lieu of removal shall include:

(i) In the case of a first offense, the Department will, in lieu of removal of the sign under paragraph (1), accept payment of \$100 for a violation of subsection (b) or double the value of the vegetation for a violation of subsection (c).

(ii) If the Department accepts payment in lieu of removal under subparagraph (i), the owner of the sign will be required to post a bond, in a form acceptable to the Department, to guarantee payment of removal costs of the sign in the event of a subsequent violation of this section with reference to the sign.

(e) *Grounds for denial of permit.* The Department will deny a permit for an outdoor advertising device if it determines that the device cannot be serviced in a feasible manner except from the right-of-way of a limited access highway, or that the device would not be visible from the highway without destruction, damage, removal or disturbance of vegetation in the highway right-of-way.

(f) *Hearing.* A person notified of the revocation or denial of a permit under this section shall be granted a hearing by the Department hearing officer if a request is made within 30 days of the date of the notice revoking or denying the permit. A request for a hearing shall operate to stay the revocation of a permit pending disposition of the hearing.

#### **Authority**

The provisions of this § 445.9 amended under the Administrative Agency Law, 2 Pa.C.S. § § 501—508 and 701—704.

### Source

The provisions of this § 445.9 adopted May 21, 1976, effective May 22, 1976, 6 Pa.B. 1135; renumbered and amended September 8, 1978, effective September 9, 1978, 8 Pa.B. 2534; amended November 10, 1978, effective November 11, 1978, 8 Pa.B. 3095; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (250453).

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[Top](#)[Bottom](#)

**OUTDOOR ADVERTISING CONTROL ACT OF 1971**  
**Act of Dec. 15, 1971, P.L. 596, No. 160**  
**AN ACT**

Cl. 36

Providing for the control and regulation of outdoor advertising adjacent to the interstate and primary highway systems within this Commonwealth; providing for administration by the Department of Transportation to comply with Federal requirements as a condition to the receipt of highway funds; fixing penalties and making appropriations.

**TABLE OF CONTENTS**

Section 1.	Short Title.
Section 2.	Purpose of Act.
Section 3.	Definitions.
Section 4.	Control of Outdoor Advertising.
Section 4.1.	Deferred Removal of Directional Information Signs.
Section 5.	Control Criteria for Size, Spacing and Lighting.
Section 6.	Rules and Regulations.
Section 7.	Permits.
Section 8.	Agreement with Federal Government or Agencies.
Section 9.	Compensation for Removal of Outdoor Advertising Devices.
Section 10.	Removal of Prohibited Advertising Devices.
Section 11.	Penalties for Violation.
Section 12.	Highway Beautification Fund.
Section 13.	Interpretation.
Section 14.	Severability.
Section 15.	Repeals.
Section 16.	Effective Date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.--This act may be cited as the "Outdoor Advertising Control Act of 1971."

Section 2. Purposes of Act.--The people of this Commonwealth would suffer economically if the Commonwealth failed to participate fully in the allocation and apportionment of Federal-aid highway funds since a reduction in such funds would necessitate increased taxation to support and maintain the Commonwealth's road program and system. Therefore, for the purpose of assuring the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the interstate and primary systems; to promote the welfare, convenience and recreational value of public travel; and to preserve natural beauty, it is hereby declared to be in the public interest to control the erection and maintenance of outdoor advertising devices in areas adjacent to the interstate and primary systems within this Commonwealth.

Section 3. Definitions.--As used in this act:

(1) "Department" shall mean the Department of Transportation of the Commonwealth of Pennsylvania and "secretary" shall mean the Secretary of Transportation of the Commonwealth of Pennsylvania.

(2) "Erect" means to construct, build, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change

of advertising message or customary maintenance and repair of a sign or sign structure.

(3) "Information center" shall mean an area or site established for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the secretary may consider desirable.

(4) "Interstate system" shall mean that portion of the national system of interstate and defense highways located within this Commonwealth, as officially designated, or as may hereafter be so designated, by the secretary and approved by the United States Secretary of Transportation, pursuant to the provisions of Title 23, United States Code, "Highways."

(5) "Outdoor advertising device" shall mean any outdoor sign, display, light, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform.

(6) "Primary system" shall mean that portion of connected main highways located within this Commonwealth which now or hereafter may be designated officially by the secretary and approved by the Secretary of Transportation of the United States pursuant to Title 23, United States Code, "Highways."

(7) "Safety rest area" shall mean 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.

(8) "Traveled way" shall mean the portion of a roadway for the movement of vehicles, exclusive of shoulders. The term "main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways, or parking areas.

(9) "Unzoned commercial or industrial area" shall mean an area which is not zoned by State or local law, regulation or ordinance, and on which there is located one or more commercial or industrial activities and the area along the highway extending outward eight hundred feet from and beyond the edge of such activity. Unzoned commercial and industrial areas shall not include land on the opposite side of the highway from said activities except that on two or three-lane noncontrolled access highways the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity, if in the opinion of the secretary, the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable, and provided that the land on the opposite side of the highway has not been designated scenic by the department. In no event shall such unzoned commercial or industrial area be located on both sides of the highway. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of the pavement of the highway.

(10) "Visible" shall mean capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(11) "Zoned commercial or industrial area" shall mean an area which is reserved for business, industry, commerce, trade or other business of any type or category pursuant to a State, or local zoning law, ordinance or regulation.



(12) "Commercial or industrial activities" shall mean those activities generally recognized as commercial or industrial by zoning law in the Commonwealth, except that none of the following activities shall be considered commercial or industrial:

- (i) Outdoor advertising signs.
- (ii) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
- (iii) Activities not visible from the main-traveled way.
- (iv) Activities conducted in a building principally used as a residence.
- (v) Railroad tracks and minor sidings.

Section 4. Control of Outdoor Advertising.--To effectively control outdoor advertising, while recognizing it to be a legitimate commercial use of property and an integral part of the business and marketing function, no outdoor advertising device shall be erected or maintained: (1) within six hundred sixty feet of the nearest edge of the right-of-way if any part of the advertising or informative contents is visible from the main-traveled way of an interstate or primary highway, except:

(i) Official signs and notices which are required or authorized by law and which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States Code.

(ii) Outdoor advertising devices advertising the sale or lease of the real property upon which they are located.

(iii) Outdoor advertising devices advertising activities conducted on the property on which they are located.

(iv) Outdoor advertising devices in zoned or unzoned commercial or industrial areas along those portions of the interstate system constructed on right-of-way, any part of the width of which was acquired on or before July 1, 1956.

(v) Outdoor advertising devices in areas zoned commercial or industrial along the interstate system and lying within the boundaries of any incorporated municipality as such boundaries existed on September 21, 1959, and devices located in any other area which, as of September 21, 1959, was clearly established by law as industrial or commercial.

(vi) Outdoor advertising devices in zoned or unzoned commercial or industrial areas along the primary system.

(vii) Outdoor advertising devices in the specific interest of the traveling public which are authorized to be erected or maintained by the secretary and which are designed to give information in the interest of the traveling public.

(viii) Directional signs, including but not limited to, signs pertaining to natural wonders, scenic and historical attractions, and other points of interest to the traveling public which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States Code.

(ix) Any other outdoor advertising devices permitted or authorized along the interstate system by the official agreement executed June 23, 1961, between the Commonwealth and the Federal Government; provided such outdoor advertising devices do not violate the provisions of Title 23, United States Code, "Highways"; or

(2) More than six hundred sixty feet from the nearest edge of such a right-of-way and visible aforesaid, if located outside of urban areas and erected with the purpose of its message being read from such a main-traveled way, except:

(i) Official signs and notices which are required or authorized by law and which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States Code.

(ii) Outdoor advertising devices advertising the sale or lease of the real property upon which they are located.

(iii) Outdoor advertising devices advertising activities conducted on the property on which they are located.

(iv) Directional signs, including but not limited to, signs pertaining to natural wonders, scenic and historical attractions, and other points of interest to the traveling public which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States Code.

(4 amended Dec. 19, 1975, P.L.565, No.161)

Section 4.1. Deferred Removal of Directional Information Signs.--Signs existing on June 1, 1972 providing necessary directional information about facilities in the interest of the traveling public shall be required to be removed only after all other nonconforming signs are removed; however, such signs shall comply with the permit requirements of section 7 and department regulations.

(4.1 added Oct. 5, 1978, P.L.1103, No.259)

Section 5. Control Criteria for Size, Spacing and Lighting.--(a) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this act and with customary use in this Commonwealth, the secretary shall strictly adhere to the criteria prescribed by this section in promulgating regulations to effectively control those signs, displays and devices provided for under clause (1)(iv) through (vi) of section 4 of this act and erected subsequent to the effective date of this act: Provided, however, That such regulations shall not apply to outdoor advertising devices erected within six months after the effective date of this act under a lease dated prior to the effective date of this act and filed with the department and recorded in the recorder's office of the county in which the device would be located within thirty days following the effective date of this act: And, provided further, That should any outdoor advertising device excluded from such regulations fall into such state of disrepair that it becomes necessary to rebuild or repair a major portion of the physical structure of such outdoor advertising device, then, in such event, such outdoor advertising device, if rebuilt or repaired, shall thereafter conform to such regulations at no cost to the Commonwealth. Exception may be made for signs destroyed due to vandalism or other tortious acts. ((a) amended Dec. 19, 1975, P.L.565, No.161)

(b) In zoned commercial or industrial areas, the secretary may certify to the Secretary of Transportation of the United States as notice of effective control, that there has been established within such areas regulations which are enforced with respect to the size, lighting and spacing of outdoor advertising devices. In such areas, the size, lighting and spacing requirements set forth below shall not apply. For the purposes of this subsection, requirements as to the number or total size of signs, displays or devices permitted on a single plot or parcel of land will be considered to be a spacing requirement.

(c) In all other zoned and unzoned commercial or industrial areas, the criteria set forth below shall apply:

(1) Size of signs:

(i) The maximum area for any one sign shall be twelve hundred square feet with a maximum height of thirty feet and maximum length of sixty feet, inclusive of any border and trim but excluding the base or apron, supports and other structural members.

(ii) The area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire sign.

(iii) A sign structure may contain one or two signs per facing and may be placed double-faced, back to back or V-type.

(iv) Signs which exceed six hundred square feet in area may not be double-faced (abutting and facing the same direction).

(2) Spacing of signs:

(i) Along the interstate system and limited access highways on the primary system, no two sign structures shall be spaced less than five hundred feet apart; and outside the boundaries of cities of all classes and boroughs, no structure may be erected adjacent to or within five hundred feet of an interchange or safety rest area, measured along the interstate or limited access primary from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(ii) Along nonlimited access highways on the primary system, no two structures shall be spaced less than three hundred feet apart if outside cities of all classes and boroughs, nor less than one hundred feet apart if within such cities and boroughs.

(iii) These spacing provisions shall not apply to sign structures separated by a building or other obstruction in such a manner that only one sign facing located within these spacing distances is visible from the highway at any one time.

(iv) Official and "on premise" signs, as defined in section 131(c) of Title 23, United States Code, shall not be counted nor shall measurements be made from them for purposes of determining spacing requirements.

(v) The distance between sign structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along the same side of the traveled way.

(3) Lighting of signs:

(i) No sign will be permitted which is not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or primary systems or which is of such intensity or brilliance as to cause glare or to impair the vision of the driver of any vehicle, or which interferes with any driver's operation of a motor vehicle.

(ii) No sign shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal.

(iii) Lighting of all signs shall be subject to all other provisions relating to lighting of signs along highways under the jurisdiction of the department.

(iv) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(d) The Commonwealth and local political subdivisions shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes and the action of the Commonwealth and local political subdivisions in this regard will be accepted for the purposes of this act. At any time, that a political subdivision adopts regulations which include



the size, spacing and lighting of outdoor advertising devices the secretary may so certify to the Secretary of Transportation of the United States and control of outdoor advertising in commercial or industrial areas will transfer to subsection (b) under this section 5.

Section 6. Rules and Regulations.--The secretary is authorized to promulgate rules and regulations governing outdoor advertising devices and such rules and regulations shall contain the criteria set forth under section 5 of this act and shall contain the permit provisions set forth under section 7 of this act. Regulations relating to outdoor advertising devices permitted under clauses (1) through (3) of section 4 shall be no more restrictive than the national standards pertaining to such outdoor advertising devices.

Section 7. Permits.--An annual permit shall be required for each outdoor advertising device regulated by this act and located outside the limits of those incorporated municipalities that have legally established and operating procedures for issuing permits for such outdoor advertising devices which have been certified by the secretary as conforming to the provisions of subsection (d) of section 5 of this act. The fee for each such permit shall be ten dollars (\$10) if the sign area does not exceed three hundred square feet; twenty dollars (\$20) if the sign area exceeds three hundred square feet but does not exceed six hundred square feet; and thirty dollars (\$30) if the sign area exceeds six hundred square feet: Provided, however, That no fee shall be payable by service clubs or religious organizations. A tag indicating that a permit has been duly issued shall be provided by the department and affixed to the device or structure by the sign owner except in the case of a free permit where the device or structure is not owned by the service club or religious organization, the permit shall be affixed thereto by the service club or religious organization.

(7 amended Dec. 19, 1975, P.L.565, No.161)

Section 8. Agreement with Federal Government or Agencies.--The secretary shall enter into an agreement with the Secretary of Transportation of the United States, consistent with the provisions of this act and to the degree necessary to preserve the Commonwealth's entitlement to its full share of Federal road funds, and may take action in the name of the Commonwealth to comply with the terms of such agreement. In the event said Secretary of Transportation of the United States or his agent fails to agree, the disagreement shall be resolved with the Attorney General of this Commonwealth participating, and taking such appeals provided for in subsection (1) of section 131 of Title 23, United States Code, as amended, as he deems advisable. The agreement entered into on October 7, 1968, by the then Secretary of Highways with the Federal Highway Administrator, has not been authorized by the General Assembly and is hereby abrogated.

Section 9. Compensation for Removal of Outdoor Advertising Devices.--(a) Just compensation shall be paid upon the removal of any outdoor advertising device (1) lawfully in existence on the effective date of this act; (2) lawfully on any highway made a part of the interstate or primary system on or after the effective date of this act; or (3) otherwise lawfully erected on or after the effective date of this act.

(b) Just compensation shall consist of payment for (1) the taking from the owner of an outdoor advertising device of all right, title, leasehold and interest in such outdoor advertising device, and (2) the taking from the owner of the real property



on which an outdoor advertising device is located of the right to erect and maintain such outdoor advertising device.

(c) The department shall require removal of all nonconforming outdoor advertising devices lawfully on any highway made a part of the interstate or primary system on or after the effective date of this act no later than the end of the sixth year after the said highway is made a part of the interstate or primary system.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, the periods specified therein within which the department shall require removal of all nonconforming outdoor advertising devices may be extended, if necessary, until such time as Federal funds are available to reimburse the Commonwealth for the Federal share of the costs of removal of those signs for which Federal contribution is provided in section 131 of Title 23 of the United States Code.

Section 10. Removal of Prohibited Advertising Devices.--In addition to the penalties prescribed in this act, the secretary may institute any appropriate action or proceeding after thirty days' written notice of a violation to the person or persons maintaining or allowing to be maintained such device, to prevent, restrain, correct or abate a violation or to cause the removal of any advertising device erected or maintained in violation of the provisions of this act, or the secretary may have any such device corrected or removed by his employees. In the event of such removal, the person or persons responsible for the erection or maintenance of such device and the person or persons allowing such device to be maintained shall be liable to the department for the cost of removal or correction of such device. Neither the secretary nor any other employe acting at his direction shall be liable in any criminal or civil action for damages for any action authorized by this act.

Section 11. Penalties for Violation.--Any person who shall erect or cause or allow to be erected or maintained any advertising device in violation of this act, shall, upon summary conviction thereof, be sentenced to pay a fine of five hundred dollars (\$500) to be paid into the Highway Beautification Fund, and in default of the payment thereof, shall undergo imprisonment for thirty days. Each day a device is maintained in violation of this act after conviction shall constitute a separate offense.

Section 12. Highway Beautification Fund.--(a) All receipts received pursuant to this act, together with all Federal funds received by the Commonwealth to accomplish the control of outdoor advertising pursuant to section 131, United States Code, "Highways," shall be paid into and credited to the Highway Beautification Fund. All costs incurred by the secretary pursuant to this act shall be paid from the Highway Beautification Fund, and as much moneys as the secretary shall deem necessary are specifically appropriated from such fund to the Department of Transportation.

(b) In addition to the moneys to be received under subsection (a) of this section, such moneys as may be necessary shall be appropriated from time to time by the General Assembly from the General Fund to the Highway Beautification Fund for the purpose of carrying out the provisions of this act.

Section 13. Interpretation.--Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which are more restrictive than the provisions of this act.

Section 14. Severability.--The provisions of this act shall be severable. If any provision of this act is found by a court

of record to be unconstitutional and void, the remaining provisions of the act shall, nevertheless, remain valid, unless the court finds the valid provisions of the act are so essentially and inseparably connected with, and so depend upon, the void provision that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 15. Repeals.--(a) The act of April 28, 1961 (P.L.101), entitled "An act prohibiting the erection and maintenance of certain advertising devices along highways on the National System of Interstate and Defense Highways; providing for the acquisition of such devices and property use in connection with such devices by the Secretary of Highways; and providing penalties for violations," is hereby repealed.

(b) All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 16. Effective Date.--This act shall take effect immediately.