



**Environmental
Planning
Commission**

**Agenda Number: 03
Project Number: 1001620
Case #: 14EPC-40081
January 8, 2014**

Supplemental Staff Report
(to be read in conjunction with the original Staff report)

Agent City of Albuquerque Planning Department

Applicant City of Albuquerque Planning City
Council Services

Amending Zoning Code §14-16-3-5(B)(1), a portion of the General Sign Regulations, to allow off-premise signs (billboards) within 660 feet of the edge of the right-of-way of Interstate 25 and Interstate 40, to be converted to electronic off-premise signs (billboards) while retaining non-conforming status.

Location City-wide

Staff Recommendation

That a recommendation of DENIAL of 14EPC-40081 be forwarded to the City Council based on the Findings beginning on Page 7.

***Staff Planner
Catalina Lehner, AICP-Senior Planner***

Summary of Analysis

The request was deferred at the December 11, 2014 EPC hearing to allow additional time to further coordinate with Code Enforcement Staff. The request is for a recommendation to City Council regarding an amendment to the General Sign Regulations, Zoning Code §14-16-3-5(B)(1) ROA 1994. Bill No. O-14-25 was introduced at City Council on October 6, 2014 and referred to the Planning Department. The EPC is a recommending body; the City Council will make the final decision.

The proposed text amendments would allow existing off-premise signs within 660 feet (1/8 mile) of the nearest edge of the right-of-way (ROW) of an interstate highway (I-25 and I-40) in the City, to be converted to electronic off-premise signs and keep their non-conforming status. Off-premise signs are commonly known as billboards. They advertise a good or service not located on the premises the sign is located on. Off-premise signs are allowed City-wide, with a few exceptions (within 660 feet of I-40, I-25 and certain streets).

Currently, any modification to an existing, static off-premise sign that makes it an electronic off-premise sign constitutes a new electronic sign. However, if a new electronic sign is in a prohibited location, such as within 660 feet of the highways, it's not allowed and a permit cannot be issued. Off-premise signs (static and electronic) that existed in this location prior to this prohibition have non-conforming status and are allowed to continue.

The 2011 amendments to the General Sign Regulations (the "2011 amendments") established regulations for electronic signs. The General Sign Regulations purposefully prohibited off-premise signs in certain locations to protect visually and/or scenically significant areas of the City. In parts of the City under State control (ex. Fairgrounds, APS, UNM), electronic signs are not subject to City regulation.

Staff finds that the proposed text amendments generally do not further applicable Goals and policies and conflict with the intent of the signage regulations as amended in 2011. Staff recommends that a recommendation of denial be forwarded to the City Council. Should the EPC and/or City Council disagree, alternate findings and conditions will be available.

City Departments and other interested agencies reviewed this application from 11/3/2014 to 11/14/2014. Agency comments used in the preparation of this report begin on Page 19 of the original Staff report.

I. INTRODUCTION

Request & Scope

This request is for a recommendation to City Council regarding an amendment to a portion of the General Signage Regulations, Zoning Code §14-16-3-5(B)(1) ROA 1994, to allow static off-premise signs (including free-standing billboards) within 660 feet (1/8 mile) of the nearest edge of the right-of-way (ROW) of an interstate highway (I-25 and I-40) in the City, to be converted to electronic off-premise signs (primarily free-standing billboards). The text amendments propose that the conversion of a static off-premise sign to an electronic off-premise sign would still constitute a new electronic sign, but would not result in loss of non-conforming status with respect to the required separation distance from the interstate highways.

Currently the General Signage Regulations prohibit new off-premise signs (static or electronic) within 660 feet of the nearest edge of the ROW of I-25 and I-40. Retaining non-conforming status means that, although existing static off-premise signs would be allowed to be converted to electronic, the location of these signs in relation to the interstate highways would be as if the signs had existed as an electronic sign prior to the effective date of the 2011 amendments to the General Sign Regulations (the “2011 amendments” or “current regulations”).

All other applicable provisions governing off-premise signs – such as sign height, area, setback, luminance, and required separation distances from existing on-premise signs – would remain in effect. The proposed text amendments are limited in scope to conversion of existing static off-premise signs to electronic off-premise signs. Neither the 2011 amendments nor the proposed text amendments address electronic off-premise signs that existed prior to the effective date of the 2002 amendments (see below); these are allowed to continue.

EPC Role:

» Please refer to p. 1 of the original Staff report (see attachment).

II. INTRODUCTION

History (updated)

In 2002, the General Sign Regulations were amended to prohibit new off-premise signs within 660 feet of the edge of the ROW of the highways (Bill No. O-02-11, see attachment). The off-premise signs (static and electronic) that existed at that time became non-conforming uses upon the effective date of O-02-11.

The 2011 amendments established definitions and basic regulations for electronic signage such as luminance, transition time between messages and dwell time for messages.

Background, State Regulations and Research & Information

» Please refer to p. 1-4 of the original Staff report (see attachment).

III. COMPREHENSIVE ZONING CODE

Definitions (Zoning Code §14-16-1-5(B))

» Please refer to p. 4-5 of the original Staff report (see attachment).

Zones & Electronic Signs

Signs are considered a use and are treated as such in the Zoning Code. Individual zones list the types of uses allowed including signs; uses not listed are not allowed. Signs are classified as on-premise or off-premise and as static or electronic.

The following table addresses on-premise and off-premise electronic signs:

<i>Electronic Signs</i>	Zone	References	<i>Allowed?</i>	
			On-Premise	Off-Premise
Residential Commercial (R-C)		R-T, R-1, C-1	No	No
Residential and Related Uses Zone, Developing Area (R-D)		R-T, R-1, R-3, C-1	No	No
Neighborhood Commercial Zone (C-1)		-	No	No
Community Commercial Zone (C-2)		-	Yes	Yes
Heavy Commercial Zone (C-3)		C-2	Yes	Yes
Industrial Park (IP) Zone		-	Yes	No
Light Manufacturing Zone (M-1)		C-3, IP	Yes	Yes
Heavy Manufacturing Zone (M-2)		M-1	Yes	Yes
Special Use Zone (SU-1)		-	Yes	No
Parking Zone (P)		-	Yes	No
Parking Reserve Zone (PR)		P	Yes	No
Special Neighborhood Zone (SU-2)		R-C, sector development plans	*	*
Special Center Zone (SU-3)		sector development plans	*	*
Planned Community Zone (PC)		sector development plans	*	*

*The SU-2, SU-3 and the PC zones, are tied to a specific sector development plan or master plan; signage is addressed in the context of the applicable plan.

Electronic signs are prohibited in residential zones and in the R-C, R-D, O-1 and H-1 zones. Electronic off-premise signs are allowed in the community commercial (C-2) and heavy commercial (C-3) zones, and in the manufacturing zones (M-1 and M-2), throughout the City except for within 660 feet of the interstates and these streets: Alameda Blvd., Griegos Rd., Rio Grande Blvd., Unser Blvd., and Tramway Blvd. [ref: §14-16-3-5(c)(1)(l) and (c)(2)(d)].

Separation Distance Requirement

The C-2 zone, which the C-3, M-1 and M-2 zones reference, lists “Sign, Off-Premise” as a use [§14-16-2-17(A)(9)] and contains regulations pertaining to off-premise signs (static and electronic). Off-premise signs are required to be separated by at least 300 feet. Within 660 feet of the highways, however, the requirement is a 1,000 foot separation distance [§14-16-2-17(A)(9)(a)(3)(b)].

Land Ownership & Regulations (Revised & Summarized)

Land in the City’s jurisdiction is subject to the Zoning Code’s General Regulations, including the signage regulations, which apply City-wide. Some land within 660 feet of the ROW of the interstate highways is not under City control because it’s owned by the Federal government, the State of New

Mexico or one of its entities (ex. UNM). The electronic off-premise signs that currently exist along the highways are either: located on land not controlled by the City and/or existed prior to the 2011 amendments.

Approximately 22 parcels along I-25 and 23 parcels along I-40 are not under City jurisdiction (see attachment) and may already have electronic off-premise signs. Though not subject to the General Sign Regulations, these off-premise signs are within municipal limits and therefore affect Albuquerque's developed and natural landscape.

IV. ANALYSIS OF APPLICABLE LAWS, ORDINANCES & PLANS

» Please refer to p. 6-9 of the original Staff report (see attachment).

V. NON-CONFORMANCE (in brief)

» Please also refer to p. 9-10 of the original Staff report (see attachment).

“Non-conforming” is a defined term in the Zoning Code (§14-16-1-5) that refers to a structure or a use that does not conform to applicable zoning regulations now, but conformed with zoning regulations in effect at the time it was created.

Non-Conforming Status

Upon the effective date of O-02-11 in 2002, off-premise signs within 660 feet (1/8 mile) of the edge of the ROW of I-25 and I-40, and under City jurisdiction, became non-conforming uses. There are no conforming billboards (static or electronic) within 660 feet of the ROW of the highways. Currently, new off-premise signs are prohibited in this location, but are allowed in most other places in the City and anywhere on property not controlled by the City.

The proposed text amendments would allow non-conforming, off-premise static signs within 660 feet of the ROW of the highways to be converted to electronic off-premise signs without losing their non-conforming status. The General Sign Regulations, however, clearly intended that no new billboards (static or electronic) be placed in this location [Ref: Zoning Code §14-16-3-5(C)(1)(l)].

Converting a static off-premise sign to an electronic off-premise sign constitutes a new sign pursuant to the General Sign Regulations [Ref: §14-16-3-5(A)(1)(h)]. New signs are subject to the existing regulations (the 2011 amendments). Retaining non-conforming status means that the converted off-premise sign would be a new sign yet would be allowed within 660 feet of the highways, despite the prohibition on new off-premise signs in that location. However, all applicable provisions governing off-premise signs—such as sign height, area, setback, luminance, and required separation distances from existing on-premise signs—are intended to remain in effect.

VI. ANALYSIS & DISCUSSION (in brief and updated)

» For *Administrative Concerns and Similarities to Wireless Telecommunication Facilities WTFs*, please refer to p. 10-12 of the original Staff report (see attachment).

Clarification

Staff met with the Code Compliance Manager (CCM, also referred to as the Zoning Enforcement Official or ZEO) during the deferral period. At the time of writing of the original report, Staff was unaware of the separation distance requirement in the C-2 zone for electronic off-premise signs. This affects the discussion of potential consequences (see below).

Off-premise signs (static and electronic) are administered by the CCM through a cap and trade program. A new off-premise sign can only be approved if an existing sign is removed which is of equal or greater sign area and located on a property of equal or more intense zoning [ref: §14-16-3-5(A)(1)(d)]. For electronic off-premise signs, the removed signs must constitute at least three times the advertising area of the new electronic sign [ref: §14-16-3-5(B)(2)(a)].

Potential Consequences

Staff believes that, if static off-premise signs near the highways are allowed to be converted to electronic, there would be no reason *not* to convert them. The fundamental purpose of electronic off-premise signs is advertising; because they change messages frequently (ex. every 8 seconds), a higher volume of advertising is possible and therefore a greater revenue stream is generated than for a static off-premise sign. Also, traffic on the interstate highways includes not just metro area residents, but also people passing through; the advertising would have more exposure.

Another potential consequence is that more electronic off-premise signs would be located near the highways. The longer-term effect is that electronic off-premise signs in non-highway locations in the City would have to be removed using the cap and trade program in order to make conversion of a static off-premise sign within 660 of the highway(s) possible. Recall that the 1,000 foot separation distance only applies to land under City jurisdiction; electronic off-premise signs could be closer together than that if one is on land under State or Federal jurisdiction. Though the 1,000 foot separation distance requirement could mitigate clustering of off-premise electronic signs to a certain extent, off-premise electronic signs in closer proximity could still result.

Furthermore, the proposed text amendments could be a first step in changing the General Sign Regulations from what they were expressly intended to be, as amended by the City Council. In 2002, new off-premise signs (static and electronic) were prohibited within 660 feet of the highways and in 2011, electronic signs became subject to regulations. Allowing static off-premise signs to be converted to electronic off-premise signs within 660 feet of the highways, meaning they are new off-premise signs, is contrary to the legislative history and intent.

Similarities to WTFs

Correction: A horizontal separation distance of at least 1,000 feet is required between free-standing Wireless Telecommunication Facilities (WTFs) (often called cell towers). Like free-standing WTFs, a horizontal separation distance of 1,000 feet is required between off-premise signs (static and electronic) in the City. The State regulations also require the 1,000 feet separation distance.

VII. ANALYSIS- PROPOSED TEXT AMENDMENTS & DISCUSSION

Should the EPC and/or the City Council disagree with Staff's recommendation, Staff suggests that language be added to limit retention of the non-conforming status to only location within 660 feet of the edge of the ROW of I-25 and I-40. For specifics, please refer to the alternate findings and conditions of recommendation.

VIII. COMMENTS

- » For *Concerns of Reviewing Agencies* and *Neighborhood & Other Concerns*, please refer to p. 12 of the original Staff report (see attachment).

IX. CONCLUSION

Deferred at the December EPC hearing, the request is for a recommendation to City Council regarding text amendments to the Zoning Code that would make it possible to convert static off-premise signs (billboards) to electronic off-premise signs (billboards) within 660 feet (1/8 mile) of the edge of the right-of-way (ROW) of I-25 and I-40 as they traverse the City. Bill No. O-14-25 was introduced at City Council on October 6, 2014 and referred to the Planning Department for review.

Currently, the General Sign Regulations prohibit new off-premise signs (static or electronic) within 660 feet of the nearest edge of the ROW of I-25 and I-40. The proposed text amendments would allow the converted electronic signs to be permitted as new signs, and still retain their non-conforming status as to the separation distance from the interstate highways established in 2002.

Staff believes that, if static off-premise signs near the highways are allowed to be converted to electronic, there is no reason *not* to convert them because the revenue stream is much greater for a variable message sign than for a static sign. Furthermore, the proposed text amendments could be a first step in changing the General Sign Regulations from what they were expressly intended to be, as amended in 2002 and 2011.

The proposed text amendments were announced in the Neighborhood News and posted to the Planning Department's web page. Staff received comments from Clear Channel Outdoor (a billboard company), and has not received any additional comments during the deferral period.

Staff finds that the proposed text amendments generally do not further applicable Goals and policies and recommends that a recommendation of denial be forwarded to the City Council. Should the EPC and/or the Council disagree, Staff has prepared alternate findings and conditions for a recommendation of approval.

RECOMMENDED FINDINGS- 14EPC-40081, January 8, 2014- Zoning Code Text Amendments

1. The request is for a recommendation to City Council regarding text amendments to amend the City's Comprehensive Zoning Code §14-16-3-5(B)(1), a portion of the General Sign Regulations, to allow existing off-premise signs including freestanding billboards presently located within 660 feet (1/8 mile) of the edge of the right-of-way (ROW) of Interstate 25 (I-25) and Interstate 40 (I-40), within municipal boundaries, to be converted to electronic off-premise signs (primarily freestanding billboards) and retain their existing non-conforming status related to the currently required separation distance from the interstate highways.
2. The proposed text amendments would make it possible for existing off-premise signs (primarily freestanding billboards) within 660 feet (1/8 mile) of the nearest edge of the ROW of I-25 and I-40, within municipal boundaries, to be converted to electronic off-premise signs. The related work for the conversion would still require City permitting and inspections for final approval, as well as compliance with other applicable provisions of the Zoning Code (§14-16-3-5 *et. al.*), although the conversion would not result in the loss of the sign's non-conforming status.
3. Currently the General Sign Regulations prohibit any new off-premise signs from being placed within 660 feet of the nearest edge of the ROW of I-25 and I-40 pursuant to Zoning Code §14-16-3-5(C)(1)(l). Converting an existing off-premise sign with a static message to an electronic off-premise sign constitutes a new sign. As such, current zoning standards – including the 660-foot separation distance from I-25 and I-40 ROW – must be met in order for the City to issue a permit for a proposed conversion of an existing off-premise sign. However, as written, the proposed text amendments refer to retaining non-conforming status without specifying that the non-conformance is only with respect to the abovementioned location.
4. The proposed text amendments are found in legislation authored by Council Services Staff and known as Bill No. O-14-25. O-14-25 was introduced at City Council on October 6, 2014 and subsequently referred to the Planning Department for review. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. Intent of the City Charter:

Adding provisions to the ROA 1994 to allow the conversion of static message off-premise signs to electronic off-premise signs is an exercise in local self-government (City Charter, Article 1). Establishing regulations for electronic signs, as was done in 2011, generally expresses the Council's desire to ensure the proper use and development of land, and promote and maintain a humane urban environment (City Charter, Article IX). The proposed text amendments, however, would allow the conversion of existing off-premise signs along the interstate highways as they

traverse the City, and these converted signs would continue to retain their non-conforming status. This may adversely impact the natural endowments (ex. views of the mesas and open spaces), environmental features (ex. the Escarpment) and general aesthetic environment for which Albuquerque is well known.

7. Intent of the Zoning Code (§14-16-1-3):

The application for proposed text amendments was filed in accordance with Zoning Code requirements. The proposed text amendments generally do not further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Electronic signs (including billboards) are already allowed City-wide with few exceptions. Adding more electronic billboards along the highways could adversely affect highway users in terms of aesthetics and safety. This could benefit the signage industry at the expense of public health, safety and welfare. However, as the zoning authority for the City of Albuquerque, the City Council will make the final determination.

8. The request generally does not further the following, applicable Comprehensive Plan Goals:

- A. Developing and Established Urban Areas Goal: The Goal is “to create a quality urban environment, which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.”

The 2011 amendments to the General Sign Regulations generally contributed to a quality urban environment because they established basic regulations for electronic signs, including electronic off-premise signs. The proposed text amendments, however, could be a first step toward unraveling a key provision— protection of the public view space along the highways. Electronic billboards, designed purposefully to get drivers’ attention, could detract from the visual environment along the highways that Albuquerque is well-known for.

- B. Community Identity and Urban Design Goal: to preserve and enhance the natural and built characteristics, social, cultural and historical features that identify Albuquerque and Bernalillo County sub-areas as distinct communities and collections of neighborhoods.

The proposed text amendments would generally not preserve and enhance the natural and built characteristics that identify Albuquerque sub-areas as distinct communities. Though the highway corridors are not linked to particular neighborhoods the same way that streets are (ex. Griegos Rd., Alameda Rd., which are protected in the General Signage Regulations and Wireless Regulations), I-25 and I-40 pass through distinct parts of the City. Converting static billboards to electronic billboards would change the characteristics of these areas— especially segments of the highways at the edges of the City such as the area east of Tramway Blvd. and the area north of Alameda Rd.

- C. Developed Landscape Goal: The Goal is to maintain and improve the natural and the developed landscapes’ quality.

The 2002 and 2011 amendments to the General Sign Regulations were important steps toward maintaining the natural and developed landscapes' quality because they prohibited off-premise signs within 660 feet of the highways, addressed electronic signs and established some protection for corridors that matter greatly to citizens (ex. Rio Grande and Tramway Blvds.). The proposed text amendments would allow conversion of static billboards to electronic billboards, which have a very different impact than their static counterparts (ex. illumination, variable messaging, etc.), along the highways.

- D. Economic Development Goal: The Goal is to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

The proposed text amendments are very narrow in scope and would provide an economic development opportunity for a limited few. Overall, such economic development would not be diversified. Nor would it be balanced with the overarching environmental goal of protecting the natural and visual environment.

9. The request generally does not further the following, applicable Comprehensive Plan policy:

Policy II.B.5m: Urban and site design which maintains and enhances unique vistas and improves the quality of the visual environment shall be encouraged.

Though generally electronic signs could become part of an area's urban qualities, the proposed text amendments only affect the area within 660 feet (1/8 mile) of the interstate highways and existing off-premise, static billboards. Conversion to electronic billboards, however, would not improve the quality of the open, visual environment along the highways and could compromise some unique vistas.

10. Signs, including off-premise electronic signs (billboards), are regulated by the State. 18 NMAC 21.5, Outdoor Advertising Requirements (1998), was repealed and replaced by legislation effective February 2014. The proposed text amendments, however, would be less stringent than State regulations, which require that converted signs be legal, conforming signs that are subject to current regulations.
11. One potential difficulty is regarding administration of the converted electronic billboards. An inconsistency with how the Code Compliance Manager (CCM) manages other electronic billboards through the established cap-and-trade program could be created. Because some billboards are regulated under the General Sign Regulations, and the converted electronic ones near the highways would not be with respect to location within 660 feet of the interstate highways, they're fundamentally different and could necessitate some administrative adjustments.
12. The proposed text amendments are limited in scope to conversion of existing static off-premise signs to electronic off-premise signs. Such conversion is considered to be a new sign and therefore is subject to the General Sign Regulations. All applicable provisions governing off-premise signs—such as sign height, area, setback, luminance, and required separation distances from existing on-premise signs—are intended to remain in effect.

13. If static off-premise signs near the highways are allowed to be converted to electronic, there would be no reason *not* to convert them. The fundamental purpose of electronic off-premise signs is advertising; because they change messages frequently (ex. every 8 seconds), a higher volume of advertising is possible and therefore a greater revenue stream is generated than for a static off-premise sign. Also, traffic on the interstate highways includes not just metro area residents, but also people passing through; the advertising would have more exposure.

14. A potential unintended consequence is that more electronic off-premise signs would be located near the highways. The longer-term effect is that electronic off-premise signs in non-highway locations in the City would have to be removed using the cap and trade program in order to make conversion of a static off-premise sign within 660 of the highway(s) possible. The 1,000 foot separation distance only applies to land under City jurisdiction; electronic off-premise signs could be closer together than that if one is on land under State or Federal jurisdiction. Though the 1,000 foot separation distance requirement could mitigate the concentration of off-premise electronic signs to a certain extent, off-premise electronic signs in closer proximity could still result.

15. The proposed text amendments were posted on the Planning Department's main web page and were announced in the November/December 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). Staff received comments from the attorney for Clear Channel Outdoor.

16. Should the EPC and/or the Council disagree with the recommendation of denial, Staff has prepared alternate findings and conditions for a recommendation of approval.

RECOMMENDATION

That a recommendation of DENIAL of Text Amendments to Zoning Code §14-16-3-5(B)(1), a portion of the General Sign Regulations, to allow static off-premise signs (billboards) within 660 feet (1/8 mile) of the edge of the right-of-way of Interstate 25 and Interstate 40, within municipal boundaries, to be converted to electronic off-premise signs (billboards) while retaining their non-conforming status, be forwarded to the City Council based on the preceding Findings.

***Catalina Lehner, AICP
Senior Planner***

cc: City of Albuquerque, City Council, Attn: Andrew Webb, P.O. Box 1293, Abq. NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Abq. NM 87102
City of Albuquerque, Legal Department, attn.: John Dubois, P.O. Box 1293, Abq. NM 87102