

**REVISED PROPOSED REGULATION OF
THE BOARD OF DIRECTORS OF
THE DEPARTMENT OF TRANSPORTATION**

LCB File No. R153-16

September 28, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 410.400.

A REGULATION relating to outdoor advertising signs; revising provisions governing certain off-premise outdoor advertising signs; setting forth requirements for certain commercial electronic variable message signs in urban areas; revising the fee for amending a permit to authorize modification of certain signs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of Directors of the Department of Transportation to prescribe regulations specifying the operational requirements for commercial electronic variable message signs, which include digital billboards and trivision signs. (NRS 410.400) Existing regulations authorize such signs in urban areas if the signs meet certain conditions such as not causing glare on the roadway and not containing flashing, intermittent or moving lights. (NAC 410.350) This regulation also requires such signs to: (1) comply with applicable federal regulations; and (2) not emit odors, smoke or sound. A digital billboard must comply with certain requirements for the operating system and use technology that adjusts the brightness or luminance of the sign to ensure that certain brightness limitations are met during nighttime hours. A trivision sign must comply with certain display times and change intervals. The Department may allow certain existing signs to be converted to or from commercial electronic variable message signs if certain conditions are met and the owner of the sign pays a permit modification fee. Finally, if a commercial electronic variable message sign does not meet the requirements for such a sign, the owner has 60 days from receipt of a notice to remedy the violation or remove the sign. The Department may remove the sign at the owner's expense if the violation is not remedied within 60 days.

Existing law requires the Board to prescribe regulations governing the issuance of permits for commercial electronic variable message signs. The Department is authorized to assess a reasonable annual fee for each permit issued for such signs to recover the administrative costs incurred by the Department in issuing such permits and for the inspection and surveillance of the signs. (NRS 410.400) Existing regulations impose a new permit fee of \$150 for the

modification of an existing sign to a commercial electronic variable message sign. (NAC 410.350) This regulation revises the permit modification fee to \$800.

Section 1. NAC 410.350 is hereby amended to read as follows:

410.350 1. Signs , *including, without limitation, commercial electronic variable message signs*, must not be ~~placed with~~ *erected or maintained in such a way that* illumination ~~that~~ *of the sign* interferes with the effectiveness of or obscures any official traffic sign, device or signal. ~~Signs~~ *Except as otherwise provided in subsection 9, signs* must not include or be illuminated by flashing, intermittent or moving lights, except any parts necessary to give public service information such as the time, date, temperature, weather or similar information ~~Signs~~ , *and* must not cause beams or rays of light to be directed at the traveled way if the light is of such intensity or brilliance ~~or is likely to be mistaken for a warning or danger signal or~~ *as* to cause glare or impair the vision of ~~any~~ *the* driver ~~of any motor vehicle~~ or to interfere with any driver's operation of a motor vehicle. Illumination or lights for signs must not resemble or simulate any lights used to control traffic ~~or other lights used to provide a warning or danger signal~~.

2. A commercial electronic variable message sign ~~including, without limitation, a trivision sign,~~ may be approved as an off-premise outdoor advertising sign in an urban area if the sign ~~does~~ :

(a) *Does* not ~~contain flashing, intermittent or moving lights, does not cause a glare on~~ *interfere with any driver's operation of a motor vehicle in the right-of-way of* the roadway . ~~and the following conditions are met:~~

~~—(a) An existing sign may be modified or updated if the sign conforms~~

(b) *Conforms* with established criteria relating to zoning, size, lighting and spacing.

~~{(b) A message on a trivision sign may have a minimum display time of 6 seconds and a maximum change interval of 3 seconds.~~

~~—(c) A trivision sign must contain a mechanism that will stop the sign in one position if a malfunction occurs.~~

~~—(d) If a sign is installed that does not comply with the provisions of this subsection, the owner of the sign shall correct the violation or remove the sign at the owner's expense.~~

~~—(e) Prior approval from the Department is required to modify existing signs to include the commercial electronic variable message sign, and a new permit fee of \$150 will be charged.}~~

(c) Complies with all applicable provisions of 23 U.S.C. § 131 and any regulations adopted pursuant to those provisions.

(d) Does not intentionally emit odors, smoke or sound except those odors or sounds which are by their nature a part of the operation or display of such a sign.

(e) Meets the applicable requirements of this section.

3. A commercial electronic variable message sign which is a digital billboard must:

(a) Contain static messages which do not:

(1) Move or create the appearance or illusion of movement during the display of each static message; or

(2) Include lights which vary in intensity for each static message or which flash.

(b) Be operated with sufficient safeguards and monitoring in place to prevent the sign and its operating system, including, without limitation, software, hardware, networks and infrastructure, from being accessed, used or misused by unauthorized persons.

(c) Ensure that each transition from one static message to the next appears instantaneous to the human eye.

(d) Have a minimum display time for each static message of:

(1) In a county whose population is less than 700,000, not less than 8 seconds.

(2) In a county whose population is 700,000 or more, not less than 6 seconds.

(e) Except as otherwise provided in subsection 5, use technology that automatically adjusts the brightness or luminance of the lighting of the digital billboard display to ensure that during nighttime such lighting does not exceed a brightness level of 0.3 foot-candle above ambient light, when measured as required pursuant to subsection 4.

(f) In the event of a malfunction that violates or may violate the provisions of this section, until the malfunction has been corrected, be:

(1) Turned off;

(2) Set to display a full black image; or

(3) Frozen on an authorized image,

↳ by the owner of the digital billboard.

4. Except as otherwise provided in subsection 5, compliance with the brightness levels pursuant to paragraph (e) of subsection 3 must be measured:

(a) Not less than 30 minutes after sunset and not less than 30 minutes before sunrise; and

(b) With a foot-candle meter used within the following distance parameters relative to the size of the face of the digital billboard:

Size of sign face

Distance of measurement

Not more than 300 square feet.....150 feet

More than 300 but not more than 385 square feet.....200 feet

More than 385 but not more than 680 square feet.....250 feet

More than 680 but not more than 1,200 square feet350 feet

5. *A digital billboard which exceeds the nighttime brightness level specified in paragraph (e) of subsection 3 as measured in foot-candles pursuant to subsection 4 must not exceed:*

(a) In a county whose population is less than 700,000, a nighttime luminance of 250 nits;

or

(b) In a county whose population is 700,000 or more, a nighttime luminance of 350 nits.

↪ Compliance with the maximum luminance levels required by this subsection must be measured not less than 30 minutes after sunset and not less than 30 minutes before sunrise with a luminance meter or a nit gun that can read to the accuracy of 5 nits.

6. *A commercial electronic variable message sign which is a trivision sign must:*

(a) Have a change interval of not more than 3 seconds and:

(1) In a county whose population is less than 700,000, have a minimum display time for each static message of not less than 8 seconds; or

(2) In a county whose population is 700,000 or more, have a minimum display time for each static message of not less than 6 seconds.

(b) Contain a mechanism which stops the sign in a stationary position in the case of a malfunction.

7. *The Department may allow a permit for an existing sign to be modified to authorize the conversion of a sign which is not a commercial electronic variable message sign to a commercial electronic variable message sign or the conversion of a sign which is a commercial electronic variable message sign to a sign which is not a commercial electronic variable message sign if:*

(a) The sign meets the applicable requirements of NRS and this chapter.

(b) A permit modification fee of \$800 is paid to the Department.

(c) The sign has been approved by the relevant local government or is a nonconforming sign under local law but has been granted grandfathered conforming status by the relevant local government, and the conversion has been approved by the relevant local government, if applicable.

8. If a commercial electronic variable message sign is installed or modified pursuant to this section and the electronic variable message display portion of the sign does not comply with the requirements of this section, the owner of the sign, not more than 60 days after receipt of written notice by the Department, must correct any violations or remove the electronic variable message display portion of the sign at the expense of the owner. After 60 days, if the owner has not corrected the violations or removed the sign, the Department may remove the electronic variable message display portion of the sign at the expense of the owner. The owner of a commercial electronic variable message sign from which the electronic variable message display portion of the sign has been removed pursuant to this subsection may continue to operate all other portions of the sign.

9. A digital billboard that meets the requirements of this section shall be deemed not to:

- (a) Include or be illuminated by flashing, intermittent or moving lights; and*
- (b) Cause glare.*

10. As used in this section:

(a) “Change interval” means the amount of time required for a trivision sign to transition from one static message to the next static message.

(b) “Commercial electronic variable message sign” has the meaning ascribed to it in NRS 410.400. The term does not include a sign located within a roadway right-of-way that:

- (1) Functions as a traffic control device; and*

(2) Is described or identified in the Manual on Uniform Traffic Control Devices , as adopted by reference in NAC 408.411.

(c) “Digital billboard” means a type of off-premise commercial electronic variable message sign which:

(1) May be internally or externally illuminated; and

(2) Uses digital message technology capable of changing the static message or copy on the sign electronically.

(d) “Flashing, intermittent or moving lights” includes, without limitation, any object which simulates or creates the effect of flashing, intermittent or moving lights, including, without limitation, reflective discs or slats, both stationary or moveable, which reflect light.

(e) “Foot-candle” means a unit of illuminance or illumination equivalent to the illumination produced by a source of one candela at a distance of one foot and equal to one lumen per square foot.

(f) “Glare” means a visual condition in which there is excessive contrast or an inappropriate distribution of light sources which limit the ability of a person to distinguish details and objects.

(g) “Luminance” means the quantitative measure of brightness of a light source or an illuminated surface.

(h) “Nit” means a unit of measurement of luminance equal to one candela per square meter.

(i) “Nit gun” means a device which measures the amount of light emanating from a specific light source in nits.

(j) “Trivision sign” means a type of off-premise commercial electronic variable message sign on which the static message or copy on the sign may be changed mechanically or electronically by movement or rotation of panels or slats, including, without limitation, through the use of remote control.