

**COUNTY AND MUNICIPAL ZONING
REGARDING BILLBOARDS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies provisions relating to billboards and outdoor advertising structures.

Highlighted Provisions:

This bill:

- ▶ modifies the county or municipal actions that constitute initiation of acquisition of a billboard by eminent domain;
- ▶ modifies the circumstances under which a county or municipality may remove a billboard without providing compensation;
- ▶ modifies the procedure a county or municipality must follow in order to be able to remove a billboard without providing compensation;
- ▶ requires counties and municipalities to allow billboards to be relocated under certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9-408, as last amended by Chapter 286, Laws of Utah 1993

17-27-407, as last amended by Chapter 12, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-9-408** is amended to read:

10-9-408. Nonconforming uses and structures.

(1) (a) Except as provided in this section, a nonconforming use or structure may be continued.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide in any zoning ordinance or amendment for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a billboard that is a nonconforming use by acquiring the billboard and associated property rights through:

- (i) gift;
- (ii) purchase;
- (iii) agreement;
- (iv) exchange; or
- (v) eminent domain.

(3) (a) [~~If a municipality prevents a billboard company from maintaining, repairing, or restoring a billboard structure damaged by casualty, act of God, or vandalism, the municipality's actions constitute initiation of]~~ A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain under Subsection (2)(c)(v)[:] if the municipality prevents a billboard owner from:

(i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism; or

(ii) except as provided in Subsection (3)(b), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit.

(b) A municipality's denial of a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard does not constitute the initiation of acquisition by eminent domain under Subsection (3)(a) if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement:

(i) by the billboard applicant in the application; and

(ii) regarding the placement or erection of the billboard.

(4) Notwithstanding Subsections (2) and (3), a [~~legislative body~~] municipality may remove a billboard without providing compensation if[;]:

(a) the municipality determines:

(i) by clear and convincing evidence that the applicant for a permit intentionally made a false or misleading statement in the applicant's application regarding the placement or erection of the billboard; or

(ii) by substantial evidence that the billboard:

(A) is structurally unsafe;

(B) is in an unreasonable state of repair; or

(C) has been abandoned for at least 12 months;

(b) the municipality notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (4)(a)(i) and (ii);

(c) the owner fails to remedy the condition or conditions within:

(i) except as provided in Subsection (4)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (4)(b); or

(ii) if the condition forming the basis of the municipality's intention to remove the billboard is that it is structurally unsafe, ten business days, or a longer period if necessary because of a natural disaster, following the billboard owner's receipt of written notice under Subsection (4)(b); and

(d) following the expiration of the applicable period under Subsection (4)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the [legislative body] municipality finds:

(i) by clear and convincing evidence, that[:(a)] the applicant for a permit intentionally made a false or misleading statement in [his] the application[:(b)] regarding the placement or erection of the billboard; or

(ii) by substantial evidence that the billboard is structurally unsafe[:(c) the billboard], is in an unreasonable state of repair[:], or [(d) the billboard] has been abandoned for at least 12 months.

(5) A municipality may not allow a nonconforming billboard to be rebuilt for a reason other than:

(a) those specified in Subsections (3) and (4);

(b) those provided in Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act; and

(c) those specified in the municipality's ordinance requiring or allowing a billboard owner to relocate and rebuild an existing nonconforming billboard to an area within the municipality where outdoor advertising is otherwise allowed under Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

~~[(5)]~~ (6) A municipality may terminate the nonconforming status of school district property when the property ceases to be used for school district purposes.

Section 2. Section **17-27-407** is amended to read:

17-27-407. Nonconforming uses and structures.

(1) (a) Except as provided in this section, a nonconforming use or structure may be continued.

(b) A nonconforming use may be extended through the same building, provided no

structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(d) If any county acquires title to any property because of tax delinquency and the property is not redeemed as provided by law, the future use of the property shall conform with the existing provisions of the county ordinances equally applicable to other like properties within the district in which the property acquired by the county is located.

(2) The legislative body may provide in any zoning ordinance or amendment for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;

(b) the termination of all nonconforming uses, except billboards by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a billboard that is a nonconforming use by acquiring the billboard and associated property rights through:

- (i) gift;
- (ii) purchase;
- (iii) agreement;
- (iv) exchange; or
- (v) eminent domain.

(3) (a) [If a county prevents a billboard company from maintaining, repairing, or restoring a billboard structure damaged by casualty, act of God, or vandalism, the county's actions constitute initiation of] A county is considered to have initiated the acquisition of a billboard structure by eminent domain under Subsection (2)(c)(v)[-] if the county prevents a billboard owner from:

(i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism; or

(ii) except as provided in Subsection (3)(b), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the county has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit.

(b) A county's denial of a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard does not constitute the initiation of acquisition by eminent domain under Subsection (3)(a) if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement:

(i) by the billboard applicant in the application; and

(ii) regarding the placement or erection of the billboard.

(4) Notwithstanding Subsections (2) and (3), a ~~[legislative body]~~ county may remove a billboard without providing compensation if[;]:

(a) the county determines:

(i) by clear and convincing evidence that the applicant for a permit intentionally made a false or misleading statement in the applicant's application regarding the placement or erection of the billboard; or

(ii) by substantial evidence that the billboard:

(A) is structurally unsafe;

(B) is in an unreasonable state of repair; or

(C) has been abandoned for at least 12 months;

(b) the county notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (4)(a)(i) and (ii);

(c) the owner fails to remedy the condition or conditions within:

(i) except as provided in Subsection (4)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (4)(b); or

(ii) if the condition forming the basis of the county's intention to remove the billboard is that it is structurally unsafe, ten business days, or a longer period if necessary because of a natural

disaster, following the billboard owner's receipt of written notice under Subsection (4)(b); and

(d) following the expiration of the applicable period under Subsection (4)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the [legislative body] county finds:

(i) by clear and convincing evidence, that~~[-(a)]~~ the applicant for a permit intentionally made a false or misleading statement in [his] the application~~[-(b)]~~ regarding the placement or erection of the billboard; or

(ii) by substantial evidence that the billboard is structurally unsafe~~[-(c) the billboard]~~, is in an unreasonable state of repair~~[-(d) the billboard]~~, or ~~[(d) the billboard]~~ has been abandoned for at least 12 months.

(5) A county may not allow a nonconforming billboard to be rebuilt for a reason other than:

(a) those specified in Subsections (3) and (4);

(b) those provided in Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act; and

(c) those specified in the county's ordinance requiring or allowing a billboard owner to relocate and rebuild an existing nonconforming billboard to an area within the county where outdoor advertising is otherwise allowed under Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

~~[(5)]~~ (6) A county may terminate the nonconforming status of school district property when the property ceases to be used for school district purposes.