

HB0355S02 compared with HB0355

~~{deleted text}~~ shows text that was in HB0355 but was deleted in HB0355S02.

Inserted text shows text that was not in HB0355 but was inserted into HB0355S02.

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Senator Margaret Dayton proposes the following substitute bill:

UNIFIED COMMERCIAL DEVELOPMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: ~~{_____}~~ Margaret Dayton

LONG TITLE

General Description:

This bill ~~{repeals a section}~~ amends provisions pertaining to unified commercial developments.

Highlighted Provisions:

This bill:

- ▶ ~~{repeals a section in the Utah Outdoor Advertising Act}~~ amends provisions pertaining to signs in unified commercial developments;
- ▶ allows existing signs to be operated, maintained, rebuilt, or replaced; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

72-7-504, as last amended by Laws of Utah 2016, Chapter 299

72-7-504.6, as enacted by Laws of Utah 2016, Chapter 299

72-7-508, as last amended by Laws of Utah 2016, Chapter 299

~~{REPEALS:~~

~~———— **72-7-504.6**, as enacted by Laws of Utah 2016, Chapter 299~~

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

Section 1. Section **72-7-504** is amended to read:

72-7-504. Advertising prohibited near interstate or primary system -- Exceptions -- Logo advertising -- Department rules.

(1) As used in this section, "specific service trailblazer sign" means a guide sign that provides users with business identification or directional information for services and eligible activities that are advertised on a logo advertising sign authorized under Subsection (3)(a)(i).

(2) Outdoor advertising that is capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system may not be erected or maintained, except:

(a) directional and other official signs and notices authorized or required by law, including signs and notices pertaining to natural wonders and scenic and historic attractions, informational or directional signs regarding utility service, emergency telephone signs, buried or underground utility markers, and above ground utility closure signs;

(b) on-premise signs advertising the sale or lease of property upon which the on-premise signs are located;

(c) on-premise signs advertising major activities conducted on the property where the on-premise signs are located;

(d) public assembly facility signs;

~~{(e) [on-premise signs within a unified commercial development]}~~ **unified commercial development signs that have received a waiver** as described in Section **72-7-504.6**; ~~{(f)}~~

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~~(f)~~ signs located in a commercial or industrial zone;

~~(g)~~ signs located in unzoned industrial or commercial areas as determined from actual land uses; and

~~(h)~~ logo advertising under Subsection (3).

(3) (a) The department may itself or by contract erect, administer, and maintain informational signs:

(i) on the main-traveled way of an interstate or primary system, as it existed on June 1, 1991, specific service signs for the display of logo advertising and information of interest, excluding specific service trailblazer signs as defined in rules adopted in accordance with Section 41-6a-301, to the traveling public if:

(A) the department complies with Title 63G, Chapter 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the sign or sign space; and

(B) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (3); and

(ii) only on rural conventional roads as defined in rules adopted in accordance with Section 41-6a-301 in a county of the fourth, fifth, or sixth class for tourist-oriented directional signs that display logo advertising and information of interest to the traveling public if:

(A) the department complies with Title 63G, Chapter 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the tourist-oriented directional sign or sign space; and

(B) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (3).

(b) The amount shall be sufficient to cover the costs of erecting, administering, and maintaining the signs or sign spaces.

(c) (i) Any sign erected pursuant to this Subsection (3) which was existing as of March 1, 2015, shall be permitted as if it were in compliance with this Subsection (3).

(ii) A noncompliant sign shall only be permitted for the contract period of the advertising contract.

(iii) A new advertising contract may not be issued for a noncompliant sign.

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(d) The department may consult the Governor's Office of Economic Development in carrying out this Subsection (3).

(4) (a) Revenue generated under Subsection (3) shall be:

(i) applied first to cover department costs under Subsection (3); and

(ii) deposited in the Transportation Fund.

(b) Revenue in excess of costs under Subsection (3)(a) shall be deposited in the General Fund as a dedicated credit for use by the Governor's Office of Economic Development no later than the following fiscal year.

(5) Outdoor advertising under Subsections (2)(a), (f), (g), and (h) shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507.

Section 2. Section 72-7-504.6 is amended to read:

72-7-504.6. Unified commercial development.

(1) As used in this section:

(a) "Common areas" means sidewalks, roadways, landscaping, parking, storage, and service areas that are identified on the approved map provided to the department describing the unified commercial development as required by this section.

~~[(a)]~~ (b) (i) "Contiguous" includes parcels that are otherwise contiguous, as defined in Section 72-7-502, that are considered to be contiguous notwithstanding a survey error or discrepancy in a legal boundary description or the presence of any of the following intervening features, including land reasonably related to those features:

(A) a road, other than a controlled route, that provides access to the development;

(B) a railway right-of-way ~~[of a public transit district that provides, or may provide, access to the development;]~~ ; ~~or~~

~~[(C)]~~ a utility line; ~~or~~

~~[(D)]~~ (C) land that is undevelopable.

(ii) "Contiguous" does not include a parcel of land that is only physically connected to another parcel of land by a long, narrow strip.

(c) "Permit waiver" means written approval by the department, issued to the owner of a unified commercial development, to maintain a unified commercial development sign within the outdoor corridor that is within the boundaries of a unified commercial development per this section.

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~~[(b)]~~ (d) (i) "Property," for purposes of the definition of "~~[on-premise sign]~~ unified commercial development sign," includes all property within a unified commercial development ~~;~~

~~— (c);~~ upon which all owners in the development have irrevocable shared ownership and use rights and irrevocable shared obligations to the common areas, and specifically excludes any parcels of land within a unified commercial development that allow residential use.

(ii) "Property" does not include development that involves merely reciprocal easements or use agreements among individual properties.

(iii) If the owners in an approved unified commercial development subdivide the unified commercial development into individual parcels that do not meet the criteria in this Subsection (1)(d), then the approved unified commercial development sign permit waiver shall be denied or revoked.

~~[(c)]~~ (e) "Unified commercial development" means a development that:

- (i) is used primarily for commercial or industrial activities;
- (ii) is developed by a single developer, including successors, under a common development plan;
- (iii) may include phased development;
- (iv) consists solely of land that is contiguous;
- (v) holds itself out to the public as a common development through signs ~~[or]~~ and other marketing efforts; and

~~[(vi) includes one or more retail outlet stores;]~~

~~[(vii) includes a railway right-of-way of a public transit district that provides, or may provide, access to the development;]~~

~~[(viii) is located wholly or partially within a planned community or similar zone;]~~

~~[(ix) includes a hotel;]~~

~~[(x) is located in a county other than a county of the first class;]~~

~~[(xi)]~~ (vi) received planning approval from the local land use authority ~~[for some or all of the development prior to December 31, 2012, and]~~ and is recorded in the county in which the development was approved.

~~[(xii) is located in a city that, at the time of approval under Subsection (1)(c)(xi), included a resort community zone.]~~

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~~(2) An on-premise]~~

(f) "Unified commercial development sign" means a sign:

(i) erected within an approved unified commercial development;

(ii) erected within the outdoor advertising corridor; and

(iii) that advertises only the brands, logos, or trade names of businesses, products, services, and events that are available to the public at facilities on parcels within the boundaries of the unified commercial development.

(2) (a) The department shall issue a revocable permit waiver to the owner of a unified commercial development, approved by the local land use authority, for the erection and maintenance of a unified commercial development sign within the outdoor advertising corridor after receiving the development map that:

(i) is approved by the local land use authority and recorded by the county; and

(ii) shows:

(A) the unified commercial development sign location;

(B) the boundaries of the unified commercial development; and

(C) included parcels, owners, and businesses within the development that would qualify to advertise on the unified commercial development sign in compliance with this section.

(b) The entity holding a permit waiver under this section shall provide an updated list of all businesses located within the unified commercial development every 12 months from the date of issue of the unified commercial development permit waiver.

(c) In the event that a parcel within the boundaries of the approved unified commercial development allows a residential use, is removed from the development, or does not include irrevocable ownership and use rights and obligations, that parcel shall be excluded from the unified commercial development for purposes of determining a legal site for the sign, and any business, product, service, or event occurring on that parcel shall be excluded from display upon the unified commercial development sign.

~~[(2)]~~ (3) [An on-premise] A unified commercial development sign within a unified commercial development shall prominently display the name of the development and may also advertise:

(a) the sale or lease of land within the unified commercial development where the sign

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is located;

~~[(b) activities conducted at venues or stores within the unified commercial development where the sign is located;]~~

~~[(c)] (b) the name of identifiable ~~[venues]~~ facilities or stores within the unified commercial development; and~~

~~[(d)] (c) products for sale or services provided ~~{at venues}~~ [at venues or stores] to the public at licensed businesses within the unified commercial development.~~

(4) (a) A unified commercial development sign may not:

(i) advertise brands, logos, or trade names of businesses, products, services, events, or activities that are not available to the public at facilities or stores within the unified commercial development or are only incidental to any business within the unified commercial development;

(ii) advertise products, services, brands, logos, or trade names of any business more than 90 days before the opening day of business to the public within the unified commercial development of the facilities or stores of the named advertiser; or

(iii) exceed the measurable limits described in Subsection (4)(b).

(b) A unified commercial development sign shall be:

(i) 750 feet, measured along the same side of an interstate right-of-way, from any other unified commercial development sign within the same unified commercial development; and

(ii) 475 feet, measured along the same side of the right-of-way of any noninterstate controlled route, from any other unified commercial development sign within the same unified commercial development.

(5) A unified commercial development sign that is not maintained in compliance with this section shall:

(a) have the sign owner's permit waiver revoked by the department;

(b) be considered as unlawful outdoor advertising; and

(c) be subject to penalties described in Section 72-7-508 and Subsection 72-7-510(3)(c).

(6) Notwithstanding any other provision in this part to the contrary, any sign or structure lawfully existing under Laws of Utah 2016, Chapter 299, on February 1, 2017, may continue to be operated, maintained, rebuilt, or replaced in a manner consistent with such

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chapter.

Section ~~{2}~~3. Section 72-7-508 is amended to read:

72-7-508. Unlawful outdoor advertising -- Adjudicative proceedings -- Judicial review -- Costs of removal -- Civil and criminal liability for damaging regulated signs -- Immunity for Department of Transportation.

(1) Outdoor advertising is unlawful when:

(a) erected after May 9, 1967, contrary to the provisions of this chapter;

(b) a permit is not obtained as required by this part;

(c) a false or misleading statement has been made in the application for a permit that was material to obtaining the permit;

(d) the sign for which a permit was issued is not in a reasonable state of repair, is unsafe, or is otherwise in violation of this part; or

(e) a sign in the outdoor advertising corridor is permitted by the local zoning authority as an on-premise sign and the sign, from time to time or continuously, advertises an activity, service, event, person, or product located on property other than the property on which the sign is located.

(2) The establishment, operation, repair, maintenance, or alteration of any sign contrary to this chapter is also a public nuisance.

(3) Except as provided in Subsections (4) and (10), in its enforcement of this section, the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) The district courts shall have jurisdiction to review by trial de novo all final orders of the department under this part resulting from formal and informal adjudicative proceedings.

(b) Venue for judicial review of final orders of the department shall be in the county in which the sign is located.

(5) If the department is granted a judgment in an action brought under Subsection (4), the department is entitled to have any nuisance abated and recover from the responsible person, firm, or corporation, jointly and severally:

(a) the costs and expenses incurred in removing the sign; and

(b) (i) \$500 for each day the sign was maintained following the expiration of 10 days

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after notice of agency action was filed and served under Section 63G-4-201;

(ii) \$750 for each day the sign was maintained following the expiration of 40 days after notice of agency action was filed and served under Section 63G-4-201;

(iii) \$1,000 for each day the sign was maintained following the expiration of 70 days after notice of agency action was filed and served under Section 63G-4-201; and

(iv) \$1,500 for each day the sign was maintained following the expiration of 100 days after notice of agency action was filed and served under Section 63G-4-201.

(6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces, destroys, or uses any sign controlled under this chapter without the owner's permission is liable to the owner of the sign for treble the amount of damage sustained and all costs of court, including a reasonable attorney's fee, and is guilty of a class C misdemeanor.

(b) This Subsection (6) does not apply to the department, its agents, or employees if acting to enforce this part.

(7) The following criteria shall be used for determining whether an existing sign within an interstate outdoor advertising corridor has as its purpose unlawful off-premise outdoor advertising:

(a) whether the sign complies with this part;

(b) whether the premise includes an area:

(i) from which the general public is serviced according to normal industry practices for organizations of that type; or

(ii) that is directly connected to or is involved in carrying out the activities and normal industry practices of the advertised activities, services, events, persons, or products;

(c) whether the sign generates revenue:

(i) arising from the advertisement of activities, services, events, or products not available on the premise according to normal industry practices for organizations of that type;

(ii) arising from the advertisement of activities, services, events, persons, or products that are incidental to the principal activities, services, events, or products available on the premise; and

(iii) including the following:

(A) money;

(B) securities;

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- (C) real property interest;
- (D) personal property interest;
- (E) barter of goods or services;
- (F) promise of future payment or compensation; or
- (G) forbearance of debt;

(d) whether the purveyor of the activities, services, events, persons, or products being advertised:

(i) carries on hours of operation on the premise comparable to the normal industry practice for a business, service, or operation of that type, or posts the hours of operation on the premise in public view;

(ii) has available utilities comparable to the normal industry practice for an entity of that type; and

(iii) has a current valid business license or permit under applicable local ordinances, state law, and federal law to conduct business on the premise upon which the sign is located;

(e) whether the advertisement is located on the site of any auxiliary facility that is not essential to, or customarily used in, the ordinary course of business for the activities, services, events, persons, or products being advertised; or

(f) whether the sign or advertisement is located on property that is not contiguous to a property that is essential and customarily used for conducting the business of the activities, services, events, persons, or products being advertised.

(8) The following do not qualify as a business under Subsection (7):

- (a) public or private utility corridors or easements;
- (b) railroad tracks;
- (c) outdoor advertising signs or structures;
- (d) vacant lots;
- (e) transient or temporary activities; or
- (f) storage of accessory products.

(9) The sign owner has the burden of proving, by a preponderance of the evidence, that the advertised activity is conducted on the premise.

(10) (a) If the department has issued two or more notices of violation of Subsection (1)(e) for an existing sign within the last three years, the department may bring an action to

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enforce in any state court of competent jurisdiction against a person, firm, or corporation that satisfies one or more of the following prerequisites:

(i) has a present ownership interest in the sign;

(ii) had an ownership interest in the sign on one or more of the days the sign was in violation of Subsection (1)(e);

~~(iii)~~ (iii) has a present ownership interest in the property upon which the sign is located, or in ~~contiguous property~~ a unified commercial development as defined in ~~Subsection~~ Section 72-7-504.6 ~~(1)(c)~~ ;

~~(iv)~~ (iv) had an ownership interest in the property upon which the sign is located, or in ~~contiguous property~~ a unified commercial development as defined in ~~Subsection~~ Section 72-7-504.6 ~~(1)~~, on one or more of the days the sign was in violation of Subsection (1)(e); ~~(v)~~

~~(v)~~ ~~(iii)~~ received or became entitled to receive compensation in any form for the unlawful outdoor advertising; or

~~(vi)~~ ~~(iv)~~ solicited the advertising.

(b) In an action under Subsection (10)(a):

(i) ~~except as provided in Subsection (10)(c),~~ the provisions of Subsections (7) and (8) apply; and

(ii) the defendants have the burden of proving, by a preponderance of the evidence, that the advertising in question is lawful under this part.

~~(c) In an action under Subsection (10)(a), for an on-premise sign within a unified commercial development Section 72-7-504.6 applies.]~~

~~(d)~~ (c) If the department is granted judgment in an action under this Subsection (10), the department is entitled to recover from the defendants, jointly and severally, \$1,500 for each day on which the sign was used for unlawful off-premises outdoor advertising.

~~Section 3. Repealer.~~

~~This bill repeals:~~

~~Section 72-7-504.6, Unified commercial development.~~

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Legislative Review Note

Office of Legislative Research and General Counsel