

700 CMR 3.00: CONTROL AND RESTRICTION OF BILLBOARDS, SIGNS AND OTHER ADVERTISING DEVICES

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3.01 : Definitions

The following terms as used in 700 CMR 3.00 shall, unless otherwise expressly stated or unless the context clearly requires a different interpretation, have the following meaning:

Abandon: when a sign has not displayed advertising copy for a period of at least three months or to neglect or fail to perform maintenance upon a sign or to fail to obtain all necessary licenses and permits to erect and maintain a sign.

Business, Industrial or Commercial Activities: for purposes of outdoor advertising, one or more of the following criteria must be met:

- (a) The activity shall maintain all the necessary business licenses as required by applicable state or local law or ordinances;
- (b) The activity shall have direct vehicular access from a public road that is normal and customary for ingress and egress by the public to the activity as well as adequate parking to accommodate public access;
- (c) If there is a permanent structure, the activity shall include customary facilities such as indoor restrooms, running water, functioning electrical connections and adequate heating and shall be equipped with permanent flooring from material other than dirt, gravel or sand;
- (d) The activity, if open to the public, shall be open during hours that are normal and customary for that type of activity in the same or similar communities; and
- (e) If there is a permanent structure or building, it shall have a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the right of way of the public way. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements shall also apply:
  - 1. A self-propelled vehicle shall not qualify for the use of a business or office for the purposes of 700 CMR 3.00.
  - 2. All wheels, axles and springs shall be removed.
  - 3. The vehicle shall be permanently secured on piers, pads or a foundation.

Cut-out: any protrusion from the original footprint of the sign as noted on the permit application, which shall not exceed five feet in height and two feet in width.

3.01 : continued

Department or MassDOT: shall mean the Massachusetts Department of Transportation, a body politic and corporate established pursuant to M.G.L. c. 6C.

Directional Signs: signs as referenced in 23 CFR 750.153.

Director: director of the Office of Outdoor Advertising within the Massachusetts Department of Transportation.

Electronic Sign: a sign that changes its message or copy at intervals by programmable electronic, digital, or mechanical processes or by remote control.

Erect: to construct, reconstruct, alter, build, raise, assemble, place, fix, affix, attach, create, paint, draw, post, display or in any way bring in to being or establish. The term shall not include ordinary/customary maintenance.

Federal Aid Primary Highway System: that portion of connected main highways as officially so designated or as may be hereafter so designated by the Department and approved by the Secretary of Transportation pursuant to Title 23, United States Code.

Federal-state Agreement: any agreement entered into by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administration and the Commonwealth of Massachusetts, acting by and through the Massachusetts Department Transportation or its predecessors.

FHWA: shall mean the Federal Highway Administration.

Freeway Primary Highway System: the part of the Federal aid primary highway system, which is subject to limited access restrictions.

Illegally Erected or Maintained Sign: a sign that is erected and/or maintained in violation of Massachusetts State law or Federal law.

Interstate System: the portion of the national system of interstate and defense highways located within the Commonwealth of Massachusetts, as officially designated, or as may hereafter so designated by the Department and approved by the Secretary of Transportation pursuant to the provisions of Title 23, United States Code.

Landmark Sign: a sign that was lawfully in existence on October 22, 1965 and determined by MassDOT and approved by FHWA to be considered a landmark sign as per applicable federal regulations.

Main Travelled 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 in a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

Modify: to alter or change a sign in any manner that prolongs the useful life of the sign including, but not limited to the following:

- (a) Raising or lowering a sign.
- (b) Changing the location of a sign.
- (c) Changing the materials of a sign.
- (d) Changing the dimensions of a sign (length, width, height, depth, number of faces, or clearance between the bottom of the sign and ground or roof on which it is standing).
- (e) Adding lighting to a sign.
- (f) Replacing a dismantled sign.
- (g) Adding bracing, guy wires or other reinforcing devices which would prolong the useful life of the sign.
- (h) Moving an existing sign.

Non-conforming and/or Grandfathered Sign: a sign that was lawfully erected, but which does not comply with the provisions of M.G.L. c. 93D, M.G.L. c. 6C, 700 CMR 3.00, 23 U.S.C., 23 CFR 750.101, or which later fails to comply with the above referenced statutes and regulations due to changed conditions. Illegally erected or maintained signs are not Non-conforming and/or Grandfathered signs. Only off-premise signs which have been continuously permitted

by the Department and utilized since their erection may be eligible for Non-conforming and/or Grandfathered status. These signs may not be altered in any way other than ordinary/customary maintenance. If any Non-conforming and/or Grandfathered sign is modified in any way or removed, it shall lose its Non-conforming and/or Grandfathered status. In no event shall on-premise signs be eligible for the protection of Non-conforming and/or Grandfathered status.

Office of Outdoor Advertising: the Office of Outdoor Advertising within the Massachusetts Department of Transportation.

On-premise or On-property Sign:

- (a) A sign which consists solely of the name of the establishment or which identifies the establishment's primary or principal products or services offered on the property is an on-property sign.
- (b) When a sign consists of a logo, brand name or trade name advertising and the product or service advertised is only incidental to the primary or principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.
- (c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

Ordinary/Customary Maintenance: any maintenance which does not prolong the useful life of the sign. Ordinary/Customary maintenance includes, but is not limited to, changing the message on the sign, painting fixtures and routine electrical repairs. Safety improvements may be allowed with the prior approval of the Director.

Outdoor Advertising: any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended or used to advertise or inform; any part of the advertising or information contents of which is visible from any public way, public park or reservation.

Person: any individual, partnership, corporation, firm, trustee, group, association, city, town, authority, county, agency or other governmental unit, excluding the Massachusetts Department of Transportation.

Pillar Displays: signs located on public property that are free standing and installed or maintained by or under contract with a public agency, municipality, authority or political subdivision of the Commonwealth of Massachusetts. At least one face of pillar displays must contain a message that serves a public purpose to include but not limited to maps, tourist information and other general municipal content.

Public Park or Reservation: any park, conservation, reservation, cemetery, playground parcel or other land, regardless of ownership, which is available for public use and is in excess of 30,000 square feet in aggregate.

Public Way: as defined by the laws of the Commonwealth of Massachusetts.

Secretary: Secretary of the Massachusetts Department of Transportation.

Sign: any billboard, display, light, figure, painting, drawing, poster, object or device, whether fixed or movable, which advertises, promotes or calls attention to any business, article, substance, idea or any other thing or concept, including both the supporting structure, fixtures and informative contents thereof. Each sign face or message shall be considered a separate sign for purposes of permit and renewal applications, fees and permit numbers.

Street Furniture Signs: includes, but is not limited to signs located on or within bus shelters, phone booths, restrooms, bicycle terminals, newspaper kiosks, trash receptacles or computer stations that are installed or maintained by or under contract with a public agency, municipality, authority or political subdivision of the Commonwealth of Massachusetts to provide a public service on public property. Signs affixed to bus shelters shall not exceed 25 square feet, unless otherwise approved by the Department.

Travelled Way: the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Un-licensed Permit: a permit which authorizes an applicant who is not otherwise licensed to

begin new paragraph

end new paragraph

engage in outdoor advertising, to display an off-premise sign which exclusively advertises the applicant's off-site business.

3.02 : Licenses; Permits; Exemptions; Off Premise Hybrid Permit

(1) Licenses.

- (a) No person shall engage in the business of outdoor advertising in the Commonwealth of Massachusetts by means of any sign or signs without first obtaining a license therefore from the Director.
- (b) Notwithstanding the requirements of 700 CMR 3.02(1)(a), no license shall be required for any person whose outdoor advertising activities are limited to:
  - 1. Erecting and maintaining signs in conformity with law and which advertise, contain or indicate:
    - a. Either the entity which primarily occupies the premises in question or a principal activity taking place on the property where the sign is located; or
    - b. The property itself or any part thereof as for sale or to let, and which contain no other matter.
  - 2. Erecting or maintaining a sign painted on or attached to the surface of any vehicle provided said vehicle is used primarily for purposes other than advertising; or
  - 3. Signs or other devices on or in the rolling stock of any common carrier or signs or other devices on or in stations, subways or structures of or used by any common carrier unless such signs or devices are displayed within view of a public way.
- (c) Licenses issued by the Director are non-transferable.

(2) Permits.

- (a) No person shall erect or maintain any sign unless a permit for such sign has been granted pursuant to 700 CMR 3.00.
- (b) Notwithstanding the requirements of 700 CMR 3.02(2)(a), no permit shall be required for any sign which is:
  - 1. An on-premise sign that is erected or maintained in conformity with the law and which advertises or indicates the entity which primarily occupies the premises in question or a principal activity taking place on the property where the sign is located.
  - 2. A sign that advertises the property itself or any part thereof as for sale or to let, and which contains no other advertising matter.
  - 3. An artistic sign which does not constitute advertising, or tend to promote goods, services or commercial activity, or result in income being derived by any party.
  - 4. Signs which are erected solely for and relating to public elections.
  - 5. Signs or other devices on or in the rolling stock of any common carrier or signs or other devices on or in stations, subways or structures of or used by any common carrier unless such signs or devices are displayed within view of a public way.
  - 6. Directional and other Official Signs.
- (c) Unless otherwise revoked, a permit shall be valid from the date it is issued until the end of that calendar year and must be renewed annually pursuant to 700 CMR 3.08.
- (d) No permit shall be granted for a sign intended to be erected and maintained on a vehicle or attached to a vehicle used primarily for the purpose of outdoor advertising.

(3) Exemptions.

- (a) The Department may extend any deadline prescribed in 700 CMR 3.00.
- (b) The Director may, with the written approval of the municipality, the Secretary, and in consultation with FHWA, issue a permit for a sign which does not strictly comply with 700 CMR 3.00. The exemption shall be reconsidered upon each annual renewal request. Additionally, the exemption may be withdrawn by the Department at any time. Each application for an exemption under 700 CMR 3.02(3) shall be made on a form furnished by the Director and accompanied by a non-refundable fee as stated in 700 CMR 3.02(3). In determining whether to issue an exemption the following factors may be considered:
  - 1. Special circumstances pertaining to the sign in question.
  - 2. Undue hardship or inequity resulting from the issuance or denial of a permit.
  - 3. Detriment to the public resulting from the issuance or denial of a permit.
  - 4. The general purpose and intent of the laws regulating outdoor advertising.
- (c) Each application for an exemption under 700 CMR 3.02(3) shall be made on a form furnished by the Director and accompanied by a non-refundable fee as stated in 700 CMR 3.02(3).

3.02 : continued

(4) Off Premise Hybrid Permit. The Director may in consultation with FHWA and with written approval of the municipality grant an Electronic Permit for On-premise or On-property Electronic Signs, in urban areas that are zoned industrial, commercial, or in a zoning district that is not formally designated as such, provided that the sign is sited in a location which is otherwise designated and restricted to a commercial or industrial use, to allow for up to 25% of the overall time and/or space of the sign to display content other than On-premise or On-property, which signs may not otherwise be in compliance with 700 CMR 3.00. An applicant for an Off Premise Hybrid Permit shall be licensed pursuant to 700 CMR 3.02(1).

3.03 : License and Permit Fees; Expiration of and Revocation of Licenses and Permits

(1) Licenses.

(a) Each initial application for a license shall be made on a form furnished by the Director and accompanied by a nonrefundable fee as stated in 700 CMR 3.03. Licenses shall expire on December 31<sup>st</sup> of each year, unless otherwise revoked or further extended by the Director. Applications for the renewal of licenses shall be received by the Director not later than the last business day of November of each year unless otherwise extended by the Director. All license applications shall be on a form furnished by the Director and accompanied by a nonrefundable fee based upon the number of permits then granted to the licensee as follows:

0 - 200 permits	\$1,000.00
In excess of 200 permits	\$1,500.00

(b) The Director reserves the right, after notice and opportunity for hearing, to revoke for cause any license at any time. Without limitation, any of the following shall constitute grounds for revocation of any license as well as for imposition of any other penalty provided by law:

1. Noncompliance with the requirements of 700 CMR 3.00, the Massachusetts General Laws, Federal Laws or the Federal-State Agreement, or any permit or license issued by the Director;
2. Any willful violation of any requirement of 700 CMR 3.00, the Massachusetts General Laws or any permit or license issued by the Director;
3. Any action relating to signs or outdoor advertising that adversely impacts the public health, safety, welfare or the environment;
4. Any submission of false, misleading or deceptive information in any application or in response to any information request by the Director.

(c) If a license is not renewed by the Director or is revoked by the Director, all signs formerly authorized by permit to the licensee shall be removed by the licensee within 60 days of the date of notification of such final action of non-renewal or revocation, except any sign the permit for which has been duly transferred to a licensee in good standing pursuant to 700 CMR 3.12.

(d) If a licensee fails to remove a sign as required by 700 CMR 3.03(1)(c), the Department may cause the sign to be removed and disposed of in accordance with applicable law without liability of the Department to the licensee or the owner of the sign in connection with said removal, and said licensee or owner shall be liable for the costs of such removal pursuant to M.G.L. c. 93D, § 30A, and M.G.L. c. 111, §§ 123 through 125.

(2) Permits.

(a) Each new application for a permit, each application for the renewal of a permit, each application for the transfer of a permit, each application for a temporary permit, each application for amending a permit shall be made on a form furnished by the Director and accompanied by a nonrefundable fee as follows:

1. New Permit Application Fee	\$250.00/per permit
2. New Electronic Permit Application Fee	\$1,000.00/per permit
3. one - 100 sq. ft.	\$100.00/per permit
4. 101 - 300 sq. ft.	\$150.00/per permit
5. 301 - 1200 sq. ft.	\$250.00/per permit
6. Tri-vision Fee	\$500.00/per permit
7. Transfer Fee	\$100.00/per permit
8. Amendment Fee	\$250.00/per permit

3.03 : continued

(b) Signs permitted for alternating messages on a single face pursuant to 700 CMR 3.11 shall be accompanied by a nonrefundable annual fee of \$500.00. This does not apply to electronic signs.

(c) Except for temporary permits issued pursuant to 700 CMR 3.05 or 700 CMR 3.07, all permits shall expire on December 31<sup>st</sup> of each year, unless otherwise revoked or further extended by the Director. Application for renewal of permits, including those in which administrative or judicial action has been taken but no final administrative or judicial decision has been rendered adverse to the applicant, shall be made on or before the last business day of November unless an extension has been granted by the Director. Applications shall be made on a form furnished by the Director and shall be accompanied by the required fee.

(d) The Director reserves the right, after notice and opportunity for hearing, to revoke for cause any permit at any time. Without limitation, any violation of any provision of 700 CMR 3.00, any violation of any provision of any permit or license, and any submission of false, misleading or deceptive information in any application or in response to any information request by the Director shall constitute grounds for revocation of any permit as well as for imposition of any other penalty provided by law.

(e) If a permit is not renewed by the Director or is revoked by the Director, the sign formerly authorized by the permit shall be removed by the permittee within 30 days of the date the Department mails notification of such final action of non-renewal or revocation. In instances where there is no permit holder, the owner of the real estate where the sign is located may be required to remove the sign structure.

(f) If a sign is abandoned or if a permit is surrendered, cancelled, or otherwise relinquished by a permittee, or if a permittee fails to file a timely or complete application for renewal, the sign formerly authorized by the permit shall be removed by that person within 30 days of the abandonment, surrender, cancellation, relinquishment, or expiration of such permit, whichever occurs first.

(g) If a permittee or the real estate owner fails to remove a sign as required by 700 CMR 3.03(2)(e), the Department may cause the sign to be removed and disposed of in accordance with applicable law without liability of the Department to the Licensee or the owner of the sign in connection with said removal, and said licensee or owner shall be liable for the costs of such removal pursuant to M.G.L. c. 93D, § 30A, and M.G.L. c. 111, §§ 123 through 125.

(h) Permits issued by the Director for any sign are revocable, and of limited duration. Such permits do not create property rights. Nothing in 700 CMR 3.00 is intended and nothing should be construed to create vested property rights of any kind.

(3) Fees. All fees are non-refundable whether the application has been approved or denied and shall be paid by check or money order payable to the Massachusetts Department of Transportation.

(4) Each application for a license, license renewal, new permit, permit renewal, permit transfer and temporary permit shall be made upon a form furnished by the Director and shall be accompanied by the prescribed fee.

3.04 : Procedure for Processing and Requirements for Application for a License and License Renewal

(1) Upon receipt of a completed application issued by the Director and all other necessary documents along with the required fee for a license or license renewal, the Director shall consider the application. In determining whether to grant or deny the application, the Director shall consider whether the applicant is fit to engage in the business of outdoor advertising in the Commonwealth based on the record, character, business reputation, actions or omissions of the applicant, or of any person specified in the application. If the application is denied, the Director shall issue a concise statement of the reasons for the denial.

(2) Any person aggrieved by the determination of the Director to deny a license may initiate an adjudicatory proceeding in accordance with 700 CMR 3.19.

(3) A determination to grant or deny a license shall become final if no hearing is requested within the time allowed by law.

3.04 : continued

- (4) Pursuant to 700 CMR 3.02(1), the application requirements for a new license are as follows:
  - (a) A completed license application issued by the Director.
  - (b) Certification that the applicant has paid all local taxes and all state taxes due and payable as required by M.G.L. c. 62C, § 49A.
  - (c) A Certificate of Good Standing issued by the Massachusetts Department of Revenue (This applies to Corporations and Limited Liability Companies only).
  - (d) The required license fee.
- (5) Pursuant to 700 CMR 3.02(1), the application requirements for renewal of a license are as follows:
  - (a) A completed license renewal application issued by the Director.
  - (b) Certification that the applicant has paid all local taxes and all state taxes due and payable as required by M.G.L. c. 62C, § 49A.
  - (c) Certification that the applicant maintains liability insurance for all Outdoor Advertising permitted signs.
  - (d) The required license fee.

3.05 : Procedure for Processing Applications for New Permits, Temporary Permits, Permit Renewals and Permit Transfers

- (1) Each application for any new permit, temporary permit, permit renewal or permit transfer shall be processed in accordance with the procedure set forth in 700 CMR 3.05. The Director may however, waive any procedure set forth in 700 CMR 3.05 not specifically required by statute.
- (2) Within a reasonable time after the filing of a completed application, the Director shall make a determination in writing on whether to grant or deny the application. If the determination is to deny the application, the Director shall set forth a brief summary of reasons for the denial, including citations to applicable law and the provisions of 700 CMR 3.00 relied upon.
- (3) Within a reasonable time after making a determination as set forth in 700 CMR 3.05(2), the Director shall send by mail, written notification to the applicant of that determination.
- (4) If the determination is to deny, the applicant may request a hearing in accordance with 700 CMR 3.19.
- (5) All hearings referred to in 700 CMR 3.05 shall be conducted as adjudicatory proceedings pursuant to 700 CMR 3.19.
- (6) A determination shall become final:
  - (a) If no hearing is requested by the applicant within the time allowed after receipt of notification of issuance of the determination; or
  - (b) Upon the decision by the hearing officer to grant or deny after a hearing.
- (7) The Director may extend any deadline prescribed in 700 CMR 3.05.
- (8) Where the provisions of 700 CMR 3.05 provide for deadlines after the "receipt" of notification, the date of the receipt shall be established by the date of certified mail delivery or other competent evidence. If the Director mails a notice to the latest address of a person on record with the Director and if delivery is refused or cannot be made to that address, the date of receipt shall be presumed to be ten days after the date the notice was mailed.

3.06 : Specific Information to be Submitted with New and Temporary Permit Applications

- (1) Pursuant to 700 CMR 3.02(2), the application requirements for a new permit and a temporary permit are as follows:
  - (a) A completed permit application issued by the Director with the required signatures;
  - (b) Plans and specifications showing the proposed dimensions, materials, location, number of faces, anchorage and other construction details of the sign sufficient to satisfy 780 CMR 14.00: *Exterior Walls*;

3.06: continued

- (c) A copy of a plan or map showing the area within a 680 foot radius of the proposed sign and including therein all public parks, reservations, public ways, businesses, water bodies or water ways, residential properties, historic properties or districts, and any other buildings, signs, and other natural features and structural improvements viewable from the principal highways which the sign is to be located;
- (d) A copy of a plan or map that includes the area of the proposed location of the sign as measured along all public ways within 500 feet of the sign location;
- (e) A certified plot plan showing the exact location of the proposed sign;
- (f) A list identifying by name and address the two separate businesses, industrial or commercial activities relied on by the applicant to satisfy 700 CMR 3.07(3);
- (g) A set of photographs of adequate size and viewing angles to depict fairly and accurately the proposed location of the sign and the surrounding area;
- (h) Certification by the applicant that the property owner or authorized agent thereof has assented to the erection and maintenance of the sign at the location shown in the application;
- (i) Certification by a duly authorized official of the city or town where the proposed sign is to be located executed no earlier than 60 days before the filing of the application showing the proposed location is in conformity with the ordinances/bylaws, special permits and/or variances of the city or town. Each municipality may designate which official is required to sign the application. In the event that a municipality has not made the designation of which official is required to sign-off on the application, it shall be presumed that the Building Inspector or their equivalent shall be the duly authorized official to sign.
- (j) Certification that all property owners within 500 feet of the proposed location of the sign have been notified by certified mail at least 30 days prior to submitting the application to the Department.
- (k) The required permit fee.
- (l) Information specifying the owner of the sign, the owner of the real estate on which the sign is located, the height, illumination, construction and dimensions of a sign.

3.07: Requirements for New Permits

- (1) Permits issued by the Director for any sign are revocable, and of limited duration. Such permits do not create property rights. Nothing in 700 CMR 3.00 is intended and nothing should be construed to create vested property rights of any kind.
- (2) The requirements of 700 CMR 3.07 shall apply to the initial issuance of any permit.
- (3) No permit shall be granted or renewed for a sign that is not located in an area of a business character. An area may be deemed to be of business character only if all of the following requirements are met:
  - (a) At least two separate business, industrial or commercial activities are being conducted within a distance of 500 feet from the proposed location of the sign, measuring from such proposed location to the buildings or parking lots or other places of actual business, industrial or commercial activity. The term "business, industrial, or commercial activities" as used in 700 CMR 3.07 shall not include residential trailer parks, railroad tracks and minor sidings; dumps, gravel pits and landfill operations, nor any agricultural, horticultural, or floricultural activities, nor any activity not visible from the public way upon which the sign is to face.
  - (b) The area in which the sign is to be located is not predominantly residential, agricultural or open space or natural area.
  - (c) The area in which the sign is to be located is zoned for industrial or commercial use.
  - (d) The provisions set forth in 700 CMR 3.07(3)(a) through (c) may not apply to Street Furniture or Pillar Displays.
- (4) No permit shall be granted for a sign which the Director determines would not be in harmony with or suitable for the surrounding area or would do significant damage to the visual environment. In making this determination, the Director may consider, among other factors, the health, safety and general welfare of the public; the scenic beauty of the area; the physical, environmental, cultural, historical or architectural characteristics of the location and the area; the structure, height and size of the sign; the illumination and brightness of the sign; and the number of signs, including on premise and accessory use signs, which are in the area wherein the sign is to be located. The existence of any sign or signs in an area shall not require a finding that the erection of another sign will be in harmony with the area.



3.07: continued

- (5) No permit shall be granted for a sign:
  - (a) Which is within the limits of any public way except as provided in M.G.L. c. 85;
  - (b) Which is visible from the main traveled way of an Interstate or the National Highway System except as provided by Federal Law and by M.G.L. c. 93D; or
  - (c) Whose erection or maintenance constitutes trespass. The Director may order in writing an applicant or permittee to submit within 14 days of the date of such order a copy of the lease, license, agreement, or easement, or an affidavit describing same for the property on which the sign that is the subject of a particular application or permit is located. Failure to comply within said time, or within such additional time as the Director may allow, shall constitute grounds for denial of the application or for the revocation of the permit.
  - (d) That is visible from a Scenic by-way as designated by the Department.
- (6) No permit shall be granted for a sign that is within 300 feet of a public park, playground, cemetery, forest, reservation and/or any other scenic or recreational area in excess of 30,000 square feet, regardless of ownership, which is available for public use, or reserved for the public, if any part of the sign or billboard structure is within view from any accessible point of the park. The method of measurement may vary depending on the type of sign and the physical environment. Signs located within street furniture that are installed or maintained by or under contract with an agency, municipality, authority or political subdivision of the Commonwealth may be permitted if otherwise in conformity with 700 CMR 3.07(4) and M.G.L. c. 93D and under the following conditions:
  - (a) A sign located on street furniture.
  - (b) The Director may, with the written approval of the municipality, exempt a sign contained within street furniture from any spacing or zoning requirements contained in 700 CMR 3.07(6).
  - (c) The provisions of 700 CMR 3.06(1)(b) through (e) and (g) shall not apply to Street Furniture.
  - (d) The applicant shall pay the required application fee as provided in 700 CMR 3.03(2)(a).
- (7) No permit shall be granted for a sign:
  - (a) On or in any way attached to a tree, rock or other natural feature.
  - (b) On a bridge, unless authorized by the Department.
  - (c) Attached to a roof or wall of a building used wholly or predominantly for residential purposes.
- (8) No permit shall be granted for a sign which will obstruct the visibility of another sign under permit issued by the Director, a sign legally erected and maintained without the need for a permit from the Director (*e.g.* "on premise" signs), or a highway or street sign.
- (9) No permit shall be granted for a sign within a city or town where the sign is not in conformity with applicable and lawful city and town ordinances and by-laws. No such ordinance or by-law shall be deemed inconsistent with 700 CMR 3.00 on the ground that such ordinance or by-law prohibits the location or maintaining of a sign which in the absence of said ordinance or by-law would be in conformity with 700 CMR 3.00.
- (10) After notice and opportunity for public hearing, the Department may designate areas of historical, architectural, scenic or environmental significance as Sign Free Areas, or Sign Free Corridors. No permit shall be granted or renewed for a sign in such Sign Free Areas or Sign Free Corridors.
- (11) The following are specifically designated as Sign Free Areas in which no permits shall be issued:
  - (a) the Town of Lexington;
  - (b) the Town of Lincoln;
  - (c) the Town of Concord, and

## 3.07: continued

(d) The Charlestown district of the City of Boston, from the Southeast corner of Bunker Hill Street and Lowney Way, thence westward along the southern edge of Lowney Way to the southern edge of Adams Street, thence westward along the southern edge of Adams Street to the southern edge of Common Street, thence westward along the southern edge of Common Street to the southeastern edge of Park Street, thence southwestward along the southeastern edge of Park Street to the western edge of Warren Street to the western edge of Main Street, thence northward along the western edge of Main Street to the northern edge of School Street, thence eastward along the northern edge of School Street to the eastern edge of Bunker Hill Street, thence southward along the eastern edge of Bunker Hill Street to the northwestern edge of Elm Street, thence northeastward along the northeastern edge of Elm Street to the eastern edge of Medford Street to the southeastern edge of Polk Street, thence southwestward along the southeastern edge of Polk Street to the eastern edge of Bunker Hill Street, thence southward along the eastern edge of Bunker Hill Street to the starting point.

(12) A permit may be granted and renewed for signs designated by the Department to be a landmark sign, including a sign on a farm structure or natural surface, of historic or artistic significance, the preservation of which would be suitable for and in harmony with the surrounding area and which would not damage the visual environment. This determination may be rescinded by the Director after notice and opportunity for comment if changes to the area or other factors render the sign unsuitable therefore.

(13) No permit shall be granted in areas zoned "commercial" or "industrial" solely to allow for outdoor advertising signs. This constitutes zoning that is not consistent with the intent of 23 CFR, Part 750.

(14) The maximum allowable area for any sign shall be 1200 square feet.

(15) The minimum spacing requirements between non-electronic permitted signs shall be 500 feet measured along the same side of any public way from which the sign may be viewed.

(16) Pillar Displays must contain at least A of the display area for public information. The advertising on Pillar displays shall not exceed 50 square feet per face

(17) Requirements for Temporary Permits. Temporary permits may be issued for signs that may not strictly comply with 700 CMR 3.00 for a period of up to one year, under such terms and conditions as the Director deems reasonable. Temporary permits shall require the prior written approval of the municipality. In making this determination the Director may consider the following: civic, financial and betterment factors; public service/non-profit allowances; urban park revitalization; business improvement districts; and neighborhood redevelopment efforts that may benefit from the issuance of the permit for the temporary sign. Said signs shall be removed by the permittee within 14 days after the date of expiration or revocation of the permit. The Department may grant extensions with the prior written approval of the municipality. Only signs that are of light weight material and easily removable shall be considered for such temporary permitting.

begin new list line

(18) No sign, including electronic, trivision or static signs, may be located adjacent to or within 500 feet of an interchange or intersection at grade, information center, or rest area on an Interstate Highway or Freeway Primary Highway, measured along the Interstate Highway or Freeway Primary Highway from the nearest point of the beginning or ending of widening of the main traveled way at the exit from or entrance to the main traveled way. This subsection 700 C.M.R. 3.07(18) does not apply in cities and towns with a population greater than 50,000.

end new list item

3.08: Requirements for Renewal of Permits

(1) Each application for a permit renewal shall be processed in accordance with the procedure set forth in 700 CMR 3.05.

(2) Upon the filing of a completed application, the Director shall make a determination in writing on whether to grant or deny the application. If the determination is made to deny the application, the Director shall set forth a brief summary of reasons therefore, including citations of the provisions of 700 CMR 3.00 or other laws relied upon.

3.08: continued

(3) No renewal of a permit shall be granted for a sign which the Director, determines would not be in harmony with or suitable for the surrounding area or would continue to adversely impact the visual environment. In making this determination, the Director may consider, among other factors, the health, safety and general welfare of the public; the scenic beauty of the area; the physical, environmental, cultural, historical or architectural characteristics of the location and the area; the structure, height and size of the sign; light and brightness of the sign; and the number of signs, including on premise and accessory use signs, which are in the area wherein the sign is located. The existence of any sign or signs in an area shall not require a finding that the renewal of the sign would be in harmony with the area.

3.09: License and Permit Revocation

(1) If it is determined that a permit has been issued in error, not involving fraud or misrepresentation by the applicant, and a sign has been constructed pursuant to said permit, the Director may:

- (a) Revoke said permit and order the removal of the subject sign;
- (b) Grant the sign Non-conforming status for such period as the Director deems reasonable;
- or
- (c) Enter into a settlement agreement with the permit holder.

(2) The Director may, after providing 30 day written notice and opportunity for hearing, revoke for cause any license or permit at any time. Without limitation, any of the following shall constitute grounds for revocation of any license or permit as well as for imposition of any other penalty provided by law:

- (a) Noncompliance with the requirements of 700 CMR 3.00, the Massachusetts General Laws, Federal Laws or the Federal State Agreement, or any permit or license issued by the Director;
- (b) Any willful violation of any requirement of 700 CMR 3.00, the Massachusetts General Laws or any permit or license issued by the Director;
- (c) Any action relating to signs or outdoor advertising that adversely impacts the public health, safety, welfare or the environment;
- (d) Any submission of false, misleading or deceptive information in any application or in response to any information request by the Director; or
- (e) Refusal of the permittee or licensee to provide information requested by the Director that is relevant to the issue of compliance with applicable law.

(3) A revocation shall be in addition to any other penalty provided by law.

(4) If a license or permit is revoked, the determination shall be final:

- (a) If the license or permit holder does not request a hearing within the time allowed after receipt of notification of revocation; or
- (b) After a decision is rendered by a hearing officer or administrative law judge.

(5) Any person who has been notified of a license revocation, or a permit revocation, including the nonrenewal of a permit, may request an administrative hearing in accordance with the procedures set forth in 700 CMR 3.19.

3.10: Permit Amendment

(1) A permit may be amended by the Director at any time after issuance, upon the application of the permittee, as to location, height, area, illumination, materials and means of support.

(2) Non-conforming and/or Grandfathered signs shall not be eligible for any permit amendments.

(3) Any modification to a sign shall require approval by the Department. An applicant shall submit a completed Permit Amendment Application prior to modifying any sign.

(4) The applicant shall pay the required application fee.

3.11: Rotating or Alternate Faces

Upon appropriate application and payment pursuant to 700 CMR 3.03(2)(a), a permit may allow the display of not more than three alternate or rotating messages upon a single sign. Each message or display shall remain static for a minimum of ten seconds. 700 CMR 3.11 does not apply to electronic signs.

3.12: Permit Transfer

(1) A permit may only be transferred upon the written request of the transferor and transferee. Requests for a permit transfer shall be in writing and signed by the transferor and transferee. No permit shall be transferred without the prior written approval of the Director.

(2) The transferor and transferee must be licensees or permittees in good standing in order to effectuate a permit transfer. Any transfer of a permit shall not cure any deficiencies or delinquencies in the transferred permit.

(3) The applicant shall pay the required application fee as provided in 700 CMR 3.03(2)(a).

3.13: Maintenance of Signs

It shall be a condition of the granting or renewal of a permit that the sign authorized thereby shall:

(1) Not be modified other than as authorized in a permit from the Director.

(2) Not have full length cut-outs, projections or extensions beyond the dimensions specified in the permit, and in no event shall such cut-out exceed five feet on top or bottom of the sign, and two feet on either side of the sign.

(3) Have no moving or movable parts, or flashing, animated, intermittent or other illumination, other than as authorized by a permit from the Director.

(4) Kept reasonably clean and neat and in proper condition, that all necessary ordinary/customary maintenance be performed, and that the sign and the ground about it shall be kept free from all rubbish and other material.

(5) Bear the name of the permittee and the most recent permit number of the sign assigned by the Director, both of which shall be identical in height and clearly visible from the principal public way on which the sign faces. All signs under permit to the same permittee or licensed advertiser shall bear the name and number in the same relative location on each sign.

3.14: Duty of Compliance

(1) No grant of any license, renewal, transfer, or other action or inaction by the Department shall relieve any person from the duty to comply with 700 CMR 3.00 or estop or prevent the Director from enforcing 700 CMR 3.00 in any manner provided by law.

(2) Any new sign approved by the Director must be completely erected within one year from date of issuance of the permit or the permit shall become null and void unless a written extension is approved by the Director.

(3) A permit which is subject to a tenancy agreement may be revoked if that tenancy is terminated.

3.15: Repair or Restoration of Signs

(1) A permittee shall repair or restore to a safe condition any part of a conforming sign when the sign is damaged.

(2) In the event that any non-conforming and/or Grandfathered sign is damaged or deemed structurally unsafe by the Department or any municipal inspectional service department the subject sign shall be removed at the permit holder's expense.

3.15 : continued

(3) In the event the owner or permittee fails to restore or remove the sign, as set forth in 700 CMR 3.15(2) and (3), the sign shall be deemed abandoned and subject to removal pursuant to 700 CMR 3.03(2)(g). If any sign is left abandoned or in dilapidated condition for a period of more than three months, the subject sign shall be removed by the permit holder.

(4) In the event that any Non-conforming and/or Grandfathered sign is, removed or taken down by the sign and/or property owner for any reason, left abandoned or in dilapidated condition for a period of more than three months the sign shall lose its Non-conforming and/or Grandfathered status. Any new structure will need a new permit and will be required to be in compliance with the requirements of 700 CMR 3.00.

(5) 700 CMR 3.15 shall not apply to ordinary or customary maintenance. No repairs that will prolong the useful life of the sign are permitted for Non-Conforming and/or Grandfathered signs.

(6) Notwithstanding 700 CMR 3.15(1) through (5), the Director may issue a permit for a Non-conforming and/or Grandfathered sign which has been destroyed by an act of nature such as a storm or fire.

3.16 : Required Notifications

The holder of any license or any permit shall notify the Director in writing within ten days of any of the following, setting forth the details thereof:

(1) Any change of business addresses, primary phone number, email or other pertinent contact information of the license and/or permit holder.

(2) The erection, repair, restoration or removal of any sign by the license or permit holder. In the case of the erection of a sign, the notice shall include a set of photographs of adequate size and viewing angles to depict fairly and accurately the location of the sign and the surrounding area.

(3) The surrender, cancellation, or relinquishment of any license or permit by the license and/or permit holder.

(4) The abandonment of any sign.

(5) Any revocation, denial or other final refusal by the owner of the property where the sign is located to continue to permit the presence of the sign.

(6) The issuance of any permit for construction of a new sign.

(7) The adoption or amendment of a municipal ordinance or by-law applicable to signs covered by the license or permit as soon as the licensee or permittee has knowledge thereof.

(8) Any material change in the area where the sign is located relevant to 700 CMR 3.00 including, without limitation, any reduction from the required number of businesses within 500 feet of the sign or any establishment of a public park or reservation within 300 feet of the sign, as soon as the permittee has knowledge thereof.

(9) Any posting of a sign by a person other than the permit holder, setting forth the identity of that person and the provision made for compliance with 700 CMR 3.12.

3.17 : Requirements for Electronic Sign Permits

(1) Permits for Electronic Signs require the prior written approval of the municipality wherein the proposed sign will be located unless otherwise exempted by State law.

(2) Except as otherwise prohibited by Federal or Massachusetts law and regulations, or local ordinances or zoning regulations, permits for Electronic Signs may be issued provided such sign complies with all of the following:

3.17: continued

- (a) Each static display must last at least ten seconds.
- (b) Achieves an instant message change.
- (c) Does not display illumination that moves, appears to move or changes in intensity during the static display period. This does not include changes to a display for time, date and temperature.
- (d) Automatically adjusts the intensity of its display according to natural ambient light conditions.
- (e) The brightness of an Electronic Sign shall not exceed 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance. Distances to measure the foot candle impact vary with the expected viewing distance of each size sign. Measurements should be taken perpendicular to the face. Measurement distance criteria:

Face Size	Distance to be measured from
12 x 25	150 feet
10'6 x 36	200 feet
14 x 48	250 feet
20 x 60	350 feet

- (3) A permit issued pursuant to 700 CMR 3.17 shall indicate that it is for an Electronic Sign. Any such permit is determined to not be prohibited by any agreement between the Department and the Secretary of Transportation of the United States. All regulations provided by 700 CMR 3.00 are applicable to Electronic Signs except where specifically stated in 700 CMR 3.17. In the event a provision of 700 CMR 3.17 conflicts with another section of 700 CMR 3.00, 700 CMR 3.17 controls.
- (4) A legally conforming sign may be modified to an Electronic Sign if a new permit for the Electronic Sign is obtained by the Department. Non-conforming and/or Grandfathered signs shall not be eligible for electronic sign conversion or permitting.
- (5) Electronic Signs shall not:
- (a) Emit any sound;
  - (b) Cause beams or rays of light to be directed at any portion of the traveled way, which beams or rays are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or otherwise interfere with the operation of a motor vehicle;
  - (c) Obscure or interfere with the effectiveness of an official traffic sign, device or signal, or cause an undue distraction to the traveling public;
  - (d) Contain more than one face visible from the same direction on the traveled way;
  - (e) Obscure or otherwise interfere with a motor vehicle operator's view of approaching, merging or intersecting traffic;
  - (f) Be within 500 feet of any type of permitted sign regardless of which direction the sign is intended to face;
  - (g) Be within 1000 feet of another off premise permitted Electronic Sign on the same side of the traveled way regardless of which direction the sign is intended to face;
  - (h) Be within 1000 feet of another off premise permitted Electronic Sign on the opposite side of the traveled way regardless of which direction the sign is intended to face;
  - (i) Contain flashing, intermittent, or moving lights; or display animated, moving video or scrolling advertising.
  - (j) Subject to approval of the Department, spacing between electronic signs may not apply where they are separated by a building or other obstruction or the geometry of the roadway is such that only one sign is visible from any point on the public way at any one time.
- (6) Subject to approval of the Department, the 1000 foot spacing requirement between electronic signs may not apply where a proposed sign and an existing sign are separated by a building or other permanent obstruction or the geometry of the roadway is such that the motorist can only view one sign at any point on the public way at any one time.
- (7) All Electronic Signs shall contain a default design that will freeze the sign in one position if a malfunction occurs.

3.17 : continued

(8) If the Department finds that an Electronic Sign or display causes glare or impairs the vision of the driver of any motor vehicle or otherwise interferes with the safe operation of a motor vehicle, upon request, the permit holder shall within 24 hours reduce the intensity of the sign to a level acceptable to the Department.

(9) In addition to any municipal requirement, the Department may impose any restriction as to the hours of operation for each Electronic Sign.

(10) The permit holder of an Electronic Sign shall coordinate with governmental authorities, through the Department's Division of Highways to display, when appropriate, emergency information important to the traveling public, such as Amber Alerts or other public safety alerts. Emergency information messages shall remain in the advertising rotation according to the protocols of the agency that issues the information, or protocols established by the Department's Division of Highways.

(11) The permit holder shall provide the Director with contact information for a person who is available 24 hours a day, seven days a week to turn off the Electronic Sign promptly if a malfunction occurs. The sign shall contain a default mechanism that freezes the sign in the event of a sign malfunction.

(12) The permit holder shall designate a minimum of 15 hours per month of total advertisement time per permit to the Department for Public Service Announcement (PSA) purposes. Said time shall be equally distributed throughout the hours of operation of the Electronic Sign. The permit holder shall submit a detailed proof of play (POP) report each month to the Director to verify that PSA's are being displayed. The Director shall determine the total number of PSA's to be aired each month and will coordinate with the permit holder for their sign. POP reports are due by the fifth day of each month for the prior month of play. Failure to submit a POP report or failure to adhere to the minimum PSA requirement may result in a fine or revocation of permit/s.

3.18 : Fines/Penalties

A violation of any of the provisions of 700 CMR 3.00 shall result in a fine in accordance with M.G.L. c. 93D. Additionally, anyone who fails to remedy any non compliance of 700 CMR within seven days after receipt of written notification from the Director, shall be subject to an additional fine in accordance with M.G.L. c. 93D. These fines shall be in addition to any other fine or penalty provided by law. Furthermore, the Department may remove any such sign at the sole expense of the sign owner.

3.19 : Request for an Appeal; Administrative Review of Notices of Denial or Revocation of a Permit or License

(1) Any applicant who is denied a request for a permit or license or whose permit and/or license has been revoked may make a written request for an appeal hearing before a hearing examiner designated by the Department. The request for hearing must be received by the Director within 30 days after receipt of the notice of denial or notice of revocation. The request for hearing must be sufficient to identify the applicant requesting the hearing and each outdoor advertising structure for which a hearing is requested. The hearing is informal, the rules of evidence do not apply, and the decision of the hearing examiner is final, subject to judicial review as provided by M.G.L. c. 30A, § 14. The applicant will be notified by mail within a reasonable time of the decision following the hearing. Each written appeal decision contains a statement of the reasons for the decision. Failure to appear at the date, time, and place specified on the hearing notice automatically results in the denial of the appeal. The act of mailing the request for hearing does not constitute receipt by the Director. An applicant shall not be entitled to a hearing if the applicant fails to request a hearing within 30 days after receipt of the notice of denial or notice of revocation. Upon receipt of a request for a hearing, the Director shall forward the request to a hearing examiner for the Office of Outdoor Advertising. Hearings for notices of denial or revocation of a permit or license shall be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure* within the time set forth in 700 CMR 3.19.

3.19: continued

(2) The hearing examiner is authorized to dismiss any request for administrative review and terminate any further proceedings if the applicant fails to appear at the time and place for a hearing as scheduled by the hearing examiner.

(3) The hearing examiner shall give written notice of the hearing to the applicant and Director by fixing a time and place for a hearing, at which time the applicant and Director or designee may appear and present evidence. The hearing examiner shall issue this notice not less than 15 days prior to the date fixed for the hearing.

(4) The decision of the hearing examiner shall be final subject to judicial review under M.G.L. c. 30A.

(5) Where the provisions of 700 CMR 3.00 provide for deadlines after the "receipt" of notification, the date of the receipt shall be established by the date of certified mail delivery or other competent evidence. If the Director mails a notice to the last known address of a person on record with the Department and if delivery is refused or cannot be made to that address, the date of receipt shall be presumed to be ten days after the date the notice was mailed.

3.20: Municipal Authority

Nothing in 700 CMR 3.00 shall be construed as prohibiting any municipality from imposing stricter limitations than those set forth in 700 CMR 3.00.

3.21: Severability

If any provision of 700 CMR 3.00 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of 700 CMR 3.00 or applications thereof which can be given effect without the invalid provision or application.

REGULATORY AUTHORITY

700 CMR 3.00: M.G.L. c. 6C; c. 93D and St. 2009, c. 25.