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TO: MEMBERS
Interim Joint Committee on Transportation

FROM: Dana Fugazzi
Senior Legislative Analyst
Transportation Committee

DATE: November 10, 2021

SUBJECT: 603 KAR 10:040E Advertising Devices

HB 328 from the 2021 Legislative Session, which established a regulatory system for outdoor advertising devices, required the Transportation Cabinet to draft administrative regulations related to those devices. The following is an update on the status of the administrative regulation:

- July 30, 2021-The Transportation Cabinet filed 603 KAR 10:040E, which set standards for advertising devices.
- August 1-September 30:
 - The Transportation Cabinet accepted written comments on the regulation through September 30, 2021.
 - The Transportation Committee staff conducted its initial review of the regulation.
 - On August 6, 2021, suit was filed in the United States District Court for the Eastern District of Kentucky alleging that 603 KAR 10:040E is unconstitutional.
- October 15, 2021-In response to written comments and staff review comments, the Transportation Cabinet filed an emergency amended after comments version of 603 KAR 10:040E. This version, which is the current version and addressed staff review concerns, is attached.
- November 9, 2021-The Transportation Cabinet requested deferral of the regulation until the December meeting of the Administrative Regulation Review Subcommittee and the Co-Chairs agreed. Following final approval of the regulation by the Administrative

Regulation Review Subcommittee, the regulation will be referred to the House and Senate for committee review during the Legislative Session.

The Transportation Committee staff will continue to monitor the regulation and keep the Committee updated as needed.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Emergency Amended After Comments)

603 KAR 10:040E. Advertising devices.

EFFECTIVE: October 15, 2021

Prior versions-

New Emergency Administrative Regulation: 48 Ky.R. 737

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for static and electronic advertising devices.

Section 1. Definitions.

(1) "Abandoned" means that, for a period of one (1) year or more, an advertising device previously lawfully erected has:

- (a) Not displayed advertising;
- (b) Displayed obsolete advertising; or
- (c) Needed substantial repairs due to lack of maintenance.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) "Advertiser" means a person or entity entered into a contractual agreement with the owner of an advertising device for advertisement services in the advertiser's interest that is displayed upon the subject advertising device at the time of violation.

(4) "Advertising device" is defined by KRS 177.830(5). [

~~(5) "Business device" means a device for advertising for which no compensation is derived, received, or exchanged for its use.]~~

(5) [(6)] "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main traveled ways of a divided:

- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway; or

(b) That is the centerline of the main traveled way of a non-divided:

- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or

4. Federal-aid primary highway.

(6)[(7)] "Commercial or industrial activities" is defined by KRS 177.830(9).

(7)[(8)] "Commercial or industrial land use":

(a) Means an activity, in a zoned area within 660 feet of the interstate or parkway right-of-way, engaged in for financial gain; and

(b) Does not mean:

1. The leasing of property for residential purposes;

2. An activity conducted in a building principally used as a residence;

3. An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;

4. Operation, maintenance, or storage of an advertising device;

5. A railroad track or minor siding; or

6. A facility generally recognized as a utility such as a cell tower.

(8)[(9)] "Commercial or industrial zone" means an area adjacent to a highway zoned to allow business, commerce, or trade as established in local ordinance or regulation.

(9)[(10)] "Compensation" is defined by KRS 177.830(11).

(10)[(11)] "Conversion" or "converted" means to legally modify or change a legal permitted static advertising device to a legal permitted electronic advertising device or a legal permitted electronic advertising device to a legal permitted static advertising device and can include the replacement of the device face, facing, or structure.

(11)[(12)] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(12)[(13)] "Destroyed" means **an [a nonconforming]** advertising device damaged beyond substantial repair due to weather related events, vandalism, or other criminal or tortious acts.

(13)[(14)] "Electronic advertising device":

(a) Means an advertising device that changes its message or copy by programmable electronic or mechanical processes; and

(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the face.

(14)[(15)] "Enlargement" means an addition to the permitted area of the facing of an advertising device.

(15)[(16)] "Erect":

(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and

(b) Does not mean routine maintenance, including changing of a message or copy.

(16)[(17)] "Exchange credit" means a singular allotment of value assigned by the department for the removal of an approved eligible advertising device that can be transferred or redeemed by its owner in exchange for future qualification of an electronic advertising device permit.

(17)[(18)] "Extension" means a temporary addition to an advertising device for a message or copy.

(18)[(19)] "Face" means the part of the advertising device including trim and background that contains the message, copy, and informative content.

(19)[(20)] "Facing" means the face or faces displayed on the same advertising device and oriented in the same direction of travel.

(20)[(21)] "Federal-aid primary highway" is defined by KRS 177.830(3) and, pursuant to 23 U.S.C.131, refers to the existence of the highway on June 1, 1991.

(21)[(22)] "FHWA adjusted urban area boundaries" means a boundary, in addition to the urban area boundary, established by the department designed to encompass areas outside mu-

municipal boundaries that have urban characteristics with residential, commercial, industrial, or national defense land uses.

~~(22)~~~~(23)~~ "Highway" means:

(a) An interstate, parkway, national highway system, or federal-aid primary highway located within the boundaries of the state of Kentucky and being further depicted by the Transportation Cabinet on <http://maps.kytc.ky.gov/PAFOA/>; and

(b) A public road maintained by the department.

~~(23)~~~~(24)~~ "Interstate highway" is defined by KRS 177.830(2).

~~(24)~~~~(25)~~ "Lawfully erected" means erected in compliance with law and administrative regulations in effect at the time of erection or as later allowed by law.

~~(25)~~~~(26)~~ "Legal permit" means written authorization granting the erection or continued existence of an advertising device in compliance with current state law and administrative regulation.

~~(26)~~~~(27)~~ "Main traveled way":

(a) Means the traveled way of a highway on which through traffic is carried; and

(b) Does not mean frontage roads, turning roadways, or parking areas.

~~(27)~~~~(28)~~ "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light from a device.

~~(28)~~~~(29)~~ "~~Noncompliant advertising device~~" means ~~an advertising device that was erected within a protected area between the dates of April 24, 2020 and March 18, 2021 and that does not comply with current state law or this administrative regulation.~~

~~(30)~~ "~~Noncompliant permit~~" means ~~written authorization allowing the continued existence of a noncompliant advertising device, subject to current state law and this administrative regulation.~~

~~(31)~~ "Nonconforming advertising device" means an advertising device that was once lawfully erected but does not comply with:

(a) Current state law or this administrative regulation; or

(b) Changed conditions such as:

1. A change in zoning;

2. The relocation or reclassification of a highway;

3. A change in restriction on size, space, or distance; or

4. The abandonment of required business or businesses.

~~(29)~~~~(32)~~ "Nonconforming permit" means written authorization allowing the continued existence of a nonconforming advertising device, subject to current state law and this administrative regulation.

~~(30)~~~~(33)~~ "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

~~(31)~~~~(34)~~ "Permit" means written authorization allowing the erection or continued existence of an advertising device, subject to current state law and this administrative regulation.

~~(32)~~~~(35)~~ "Protected area" means the area adjacent to the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, and being:

(a) Within 660 feet from the edge of the right-of-way in an area defined as an urban area; and

(b) Within and extending ~~[Extending]~~ beyond 660 feet from the edge of the right-of-way outside of an area defined as an urban area.

~~(33)~~~~(36)~~ "Scenic byway" is defined by KRS 177.572.

~~(34)~~~~(37)~~ "Scenic highway" is defined by KRS 177.572.

~~(35)~~~~(38)~~ "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message or copy but can include a numerical dis-

play changed by an electronic or mechanical process that does not exceed one-half of the face.

(36)[(39)] "Substantial repair" means the cost to repair the advertising device would exceed sixty (60) percent of the costs to replace it with an advertising device of the same basic construction using new materials and at the same location.

(37)[(40)] "Substantial structure" means an affixed, solid, or strong permanent construction.

(38)[(41)] "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(39)[(42)] "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

(40)[(43)] "Urban area" is defined by KRS 177.830(10) as well as any adjacent geographical area identified as FHWA Adjusted Urban Area Boundaries.

(41)[(44)] "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

Section 2. Conditions Relating to Static and Electronic Advertising Devices Located in a Protected Area.

(1) A static or an electronic advertising device located in a protected area of an interstate, parkway, national highway system, or federal-aid primary highway displaying copy or a message, whether or not legible, that is visible from the main traveled way shall require a permit issued by the department.

(2) A permit shall only be issued for a device in a protected area of:

(a) An interstate or parkway being erected or maintained fifty (50) feet or more from the edge of the main traveled way or turning roadway that:

1. Is zoned commercial or industrial and was an incorporated municipality on or before September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on or before September 21, 1959; or

(b) A national highway system or federal-aid primary highway being erected or maintained in:

1. A commercial or industrial zone; or

2. An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured **perpendicular to and along the centerline** [~~along or parallel to the pavement~~] of the highway; and

(c) Complies with applicable county or city zoning ordinance and regulations.

(3) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured **perpendicular to and along** [~~horizontally and at a right angle to~~] the centerline of the interstate, parkway, national highway system, or federal-aid primary highway.

(4) The erection or existence of an advertising device shall be prohibited in a protected area if the device:

(a) Is abandoned;

(b) Is not clean and in good repair;

(c) Is not securely affixed to a substantial structure permanently attached to the ground;

(d) Directs the movement of traffic;

(e) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(f) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(g) Is erected or maintained upon a tree;

- (h) Is erected upon or overhanging the right-of-way;
- (i) Is mobile, temporary, or vehicular;
- (j) Is a static advertising device and painted or drawn on rocks or another natural feature; or
- (k) Is a static advertising device and includes or is illuminated by flashing, intermittent, or moving lights.

(5) The spacing, measured perpendicular to and along the centerline of the highway, between static and electronic advertising devices with visible facings oriented in the same [per] direction of travel on:

(a) Interstates, parkways, national highway systems, or limited access federal-aid primary highways shall be a minimum of:

1. 2,500 feet between electronic advertising devices;
2. 500 feet between an electronic advertising device and a static advertising device; or
3. 500 feet between a static advertising device and another static advertising device; and

(b) Non-limited access federal-aid primary highways shall, pursuant to KRS 177.863(2)(a), be a minimum of:

1. 300 feet between advertising devices, unless separated by a building, natural obstruction, or roadway, in a manner so that only one (1) sign located within the required spacing distance shall be visible from the highway at any one time; or

2. 100 feet between advertising devices if located within an incorporated municipality.

(6) An advertising device displaying copy or message, whether or not legible, that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements of this section for each highway independently.

(7) An electronic advertising device shall only be erected or maintained within an urban area located within 660 feet of right-of-way of a highway.

(8) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to Section ~~6~~**8** of this administrative regulation.

(9) An electronic advertising device shall not be converted to a static advertising device prior to receiving a permit pursuant to Section ~~6~~**8** of this administrative regulation.

(10) Lighting used for a static advertising device shall be:

(a) Only white;

(b) Effectively shielded to prevent a beam of light from being directed at the interstate, parkway, national highway system, or federal-aid primary highway;

(c) Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; and

(d) Of a luminance less than 300 nits.

(11) An electronic advertising device erected or maintained in a protected area shall:

(a) Not have a facing larger than 672 square feet;

(b) Not have more than one (1) face per facing;

(c) Not contain extensions to the face;

(d) Not have interior angles between two (2) facings that exceed forty-five (45) degrees; and

(e) Be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.

(12) The message or copy on an electronic advertising device shall:

(a) Be static for at least eight (8) seconds;

(b) Change from one (1) message or copy to another in less than two (2) seconds;

(c) Not blink, scroll, or contain animation or video; and

(d) Be programmed to freeze in a static display if a malfunction occurs.

(13) A static advertising device:

(a) Shall not:

1. Exceed the maximum size of 1,250 square feet per facing as established in KRS 177.863(3)(a);

2. Contain more than two (2) advertisements or faces per facing pursuant to KRS 177.863(3)(b); or

3. Have interior angles between two (2) facings that exceed forty-five (45) degrees **if device has more than two (2) faces**; and

(b) May contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size limits of the facing of the device established in KRS 177.863(3)(a).

(14) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(15) The name of the owner of an advertising device shall:

(a) Be legible from the main traveled way;

(b) Not be larger than twenty (20) square feet;

(c) Be shown without other owner information; and

(d) Not be considered an advertisement.

Section 3. Exchange of Advertising Device for Permit.

(1) An advertising device proposed for exchange shall require eligibility approval by the department pursuant to **[subsections (3), (4), and (5) of]** this section prior to removal.

(2) The owner of an approved advertising device exchange shall receive an exchange credit by the department upon verification of removal.

(3) An advertising device eligible for exchange shall be:

(a) Currently nonconforming as established in Section 4 of this administrative regulation or pursuant to local regulations;

(b) Not less than fifty (50) square feet per facing; and

(c) Situated in an unpermissible location in a protected area. ~~;~~ **or**

~~(d) **Observable from a scenic highway.**~~

(4) The submittal of six (6) exchange credits shall be required for one (1) new electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(5) The submittal of five (5) exchange credits shall be required for the conversion of an existing legal permitted static advertising device in an urban area to an electronic advertising device.

(6) If an Application for Electronic Advertising Device is denied by the department, the department shall hold and apply any exchange credits pending the outcome of any subsequent appeal or until exchange credits can be applied toward another approved application.

(7) If the permittee voluntarily removes an advertising device and receives an exchange credit, the permittee shall thereby waive any right or claim to any additional compensation from the department for that device.

(8) The ownership of an exchange credit may be transferred with acknowledgment of the department and shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

Section 4. Nonconforming Static and Electronic Advertising Devices.

(1) A nonconforming advertising device in a protected area shall require a nonconforming permit.

(2) A nonconforming advertising device permit shall be required to be renewed annually pursuant to Section ~~6[8]~~ of this administrative regulation.

(3) A nonconforming advertising device may remain in place if the device:

(a) Is not abandoned;

(b) Has been subjected to only routine maintenance as established in subsection ~~(4)[(6)]~~ of this section;

(c) Was in compliance with state law and KAR Title 603 as well as local zoning, sign, or building restrictions at the time of erection; and

(d) Remains unaltered beyond the extent of routine maintenance as it was on the effective date of the state law or requirement of KAR Title 603 that made the device nonconforming.

(4) An owner may conduct routine maintenance of a nonconforming advertising device. Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers;

(f) Rebuilding a destroyed advertising device; or

(g) Changing an advertising message or copy on an advertising device.

(5) An owner shall not conduct non-routine maintenance of a nonconforming advertising device. Non-routine maintenance shall include:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location or configuration of the device;

(e) A change in the direction or configuration of the face or faces;

(f) The addition of a light or lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination; or

(g) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process on a static advertising device.

(6) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation and result in the loss of nonconforming classification and action pursuant to Section ~~8[10]~~ of this administrative regulation.

Section 5. ~~[Business Devices.~~

~~(1) A business device that complies with this administrative regulation shall only be erected in a protected area if the device complies with county or city zoning ordinances but shall not require a permit from the department.~~

~~(2) A business device shall only be erected upon the property parcel where the business or businesses are located as is demarcated by the unique Parcel Identification Number utilized and assigned by the Property Valuation Administration Office of jurisdiction and:~~

~~(a) Inside the activity boundary line; or~~

~~(b) No further than 400 feet from the activity boundary line.~~

~~(3) A business device placed within fifty (50) feet of the activity boundary line shall not exceed 1,250 square feet, including border and trim excluding supports. An entrance or exit on the property shall be considered within the activity boundary line.~~

~~(4) If further than fifty (50) feet outside the activity boundary line, a business device shall not exceed:~~

~~(a) Twenty (20) feet in length, width, or height; and~~

~~(b) 150 square feet in area, including border and trim and excluding supports.~~

~~(5) No more than one (1) business device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.~~

~~(6) If taking measurements for the placement of a business device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.~~

~~(7) A business device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the property parcel.~~

~~(8) If taking measurements for the placement of business device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.~~

~~(9) A business device erected for a shopping center, mall, or other combined business location shall either:~~

~~(a) Identify a business or businesses situated upon the same property parcel; or~~

~~(b) Display business activities being conducted upon the same property parcel.~~

~~(10) A business device shall not:~~

~~(a) Be of such intensity as to cause glare or impair the vision of a driver;~~

~~(b) Move, or have moving or animated parts;~~

~~(c) Be erected or maintained on a tree; or~~

~~(d) Be erected upon or overhanging the right-of-way.~~

~~(11) An electronic business device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.~~

~~(12) A business device shall not affect the spacing requirements of an advertising device as established in Section 2(5) of this administrative regulation.~~

~~(13) Extensions of a facing up to fifteen (15) percent shall be allowed but shall not exceed the maximum size of the facing of the device as established this section.~~

~~(14) The owner of a business device shall be subject to revolving compensation compliance reviews and upon request shall provide to the department all requested documentation relevant to certify the continued compliance of a business device such as:~~

~~(a) A signed affidavit in which the device owner shall attest to the device's compliance to current law and this administrative regulation;~~

~~(b) Financial records or statements relevant to compliance certification; and~~

~~(c) PVA parcel data.~~

~~(15) If the device is determined to be an advertising device, paragraphs (a) through (d) of this subsection shall apply.~~

~~(a) The department shall send notice by certified letter to the owner of a business device that becomes subject to this chapter. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.~~

~~(b) The device owner shall apply for and obtain an advertising device permit in accordance with the provisions of this administrative regulation within sixty (60) days of notice.~~

~~(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.~~

~~(d) If the owner of a device as established in paragraph (a) of this subsection does not obtain an advertising device permit within sixty (60) days of the notice, the owner shall be subject to:~~

~~1. A fine of \$500 per violation pursuant to KRS 177.990(2); and~~

~~2. Provisions as established in KRS 177.870.~~

~~(16) If the device is found to be out of compliance with current business device requirements, paragraphs (a) through (d) of this subsection shall apply.~~

~~(a) The department shall send notice by certified letter to the owner of a business device stating the required corrective action or actions to become compliant with the provisions of this section. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.~~

~~(b) The device owner shall implement required corrective actions or actions within sixty (60) days of notice.~~

~~(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.~~

~~(d) If the owner of a device as established in paragraph (a) of this subsection does not correct the violation or violations within sixty (60) days of notice, the owner shall be subject to:~~

~~1. A fine of \$500 per violation pursuant to KRS 177.990(2); and~~

~~2. Action pursuant to Section 10 of this administrative regulation.~~

~~Section 6. Noncompliant Static and Electronic Advertising Devices.~~

~~(1) A noncompliant advertising device in a protected area shall require a noncompliant permit.~~

~~(2) A noncompliant advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.~~

~~(3) A noncompliant advertising device may remain in place if the device:~~

~~(a) Is not abandoned;~~

~~(b) Has been limited to maintenance activities as established in Section 4(6) (b) through (f) of this administrative regulation to correct hazardous conditions determined to be in the interest of the safety of the traveling public; and~~

~~(c) Was in compliance with local zoning, sign, or building restrictions at time of erection.~~

~~(4) A noncompliant advertising device in a protected area shall be granted a legal permit if the device is in compliance with current state law and this administrative regulation.~~

~~(5) Except as established in subsection (3)(b) of this section, maintenance on a noncompliant advertising device shall constitute a violation of KRS 177 and this administrative regulation and shall result in the loss of noncompliant classification and action pursuant to Section 10 of this administrative regulation.~~

~~(6) Noncompliant advertising devices shall not be eligible as an exchange credit.~~

Section (7)]. Scenic Highways and Byways.

(1) Subsequent to the designation of a scenic highway by the Transportation Cabinet, additional static or electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for a static or electronic advertising device located on a scenic byway as a static or electronic advertising device located on a scenic highway.

(3) Only routine maintenance as established in Section ~~4(4)~~**4(3)** shall be performed on a static or electronic advertising device legally in existence on the date of the scenic highway designation.

Section 6.[Section 8.] Permits, Renewals, and Transfers.

(1) The requirements of this section shall apply to legal ~~and[,] nonconforming[, and non-compliant]~~ advertising devices within a protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(2) A permit shall be required from the department for a legal ~~and[,] nonconforming[, or noncompliant]~~ advertising device located within a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within three (3) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for a static or an electronic advertising device permit shall be submitted on a completed Application for Static Advertising Device, TC Form 99-221 or Application for Electronic Advertising Device, TC Form 99-222.

(5) Application for an advertising device permit and annual permit renewal shall require a fee pursuant to KRS 177.860(1) and as established in Section ~~7[9]~~ of this administrative regulation.

(6) The timing of issuance of an advertising device permit shall be determined based on the order in which a completed application and payment of applicable fees are made to the department.

(7) The permit issued for the erection of a static or electronic advertising device that has not been constructed prior to the renewal date shall be revoked.

(8) If an advertising device is erected or maintained without an approved permit, the department shall issue a notice of violation to the owner of the device. If the owner of the device cannot be identified, the department shall send notice to the landowner of record.

(9) If a violation is not cured within sixty (60) days of the date of receipt of the notice, the owner or landowner shall be subject to:

(a) A fine of \$500 per violation pursuant to KRS 177.990(2); and

(b) Action pursuant to Section ~~8[10]~~ of this administrative regulation.

(10) ~~Between [Beginning in 2023, between]~~ the renewal period of November 1 and December 31, a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, and applicable photographs shall be submitted beginning in 2023. An incomplete or inaccurate submission shall not be considered by the department.

(11) Annual permit renewals shall require a fee in the amount of \$100 per each static or electronic advertising device pursuant to KRS 177.860(1).

(12) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees within thirty (30) days of the expiration of the permit shall result in:

(a) The owner of the legal **and[;]** nonconforming[~~,- or noncompliant~~] advertising device being fined \$500 per permit violation pursuant to KRS 177.990(2); and

(b) Conditional suspension of the permit.

(13) Upon receipt of a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration, the suspended permit shall be reinstated if compliant with current law and this administrative regulation.

(14) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration of the permit shall result in:

(a) Revocation of the permit;

(b) Loss of nonconforming **[or noncompliant]** classification for a nonconforming **[or non-compliant]** advertising device; and

(c) Action pursuant to Section **8[40]** of this administrative regulation.

(15) A static or electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location or configuration shall not be changed. A transfer of ownership for an advertising device shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

(16) Notification of a substantial change to an approved static or electronic advertising device permit shall be submitted **and approved by [to]** the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of bracing, guy wires, or other reinforcement;

(e) A change in the location of the device;

(f) A change in the direction or configuration of the face or faces; or

(g) The addition of a light or lights, either attached or unattached, to help illuminate a static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit.

(17) Making a substantial change to a device without **prior approval from [first submitting notification to]** the department constitutes a violation of this administrative regulation and shall result in action pursuant to Section **8[40]** of this administrative regulation.

(18) Issuance of a permit under this administrative regulation shall not create a contract or property right in the permit holder.

Section 7.[Section 9.] Permit Fees.

(1) Permit fees and annual renewal fees shall be assessed pursuant to KRS 177.860 beginning on January 1, 2023[Beginning on January 1, 2023, pursuant to KRS 177.860, permit fees and annual renewals fees shall be assessed], including:

(a) \$250 for an Application for Electronic Advertising Device permit;

(b) \$150 for an Application for Static Advertising Device permit; and

(c) \$100 for the Advertising Device Annual Permit Renewal Request.

(2) A fee established by this section shall be payable by cashier's check or electronic payment.

(3) A fee paid to the department established in this section shall be nonrefundable.

Section 8.~~**[Section 10.]**~~ Notice of Violations; Appeals.

(1) The department shall notify the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2) If device continues to be in violation thirty (30) days after notice, the department shall notify the landowner, the advertiser, and the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(3) The landowner, the advertiser, or the owner of an advertising device aggrieved by the findings of the department may request an administrative hearing. An administrative hearing shall be pursuant to KRS Chapter 13B.

(a) The request shall be in writing and within thirty (30) days of the certified letter.

(b) A request for a hearing shall thoroughly state the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(4) If the landowner, the advertiser, or the owner of an advertising device fails to request an administrative hearing or fails to cure the violation within thirty (30) days of notice, the department shall proceed pursuant to KRS 177.870.

Section 9.~~**[Section 11.]**~~ Penalties.

(1) The owner of an advertising device in violation of a provision of KRS Chapter 177 or of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application or renewal contains false or materially misleading information.

Section 10.~~**[Section 12.]**~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Static Advertising Device", TC Form 99-221, July 2021;

(b) "Application for Electronic Advertising Device", TC Form ~~99-221, July~~ **99-222, October** [99-221, July] 2021;

(c) "Advertising Device Annual Permit Renewal Request", TC Form 99-223, ~~July~~ **October** [July] 2021;

(d) "Advertising Device or Exchange Credit Ownership Transfer", TC Form 99-224, ~~July~~ **October** [July] 2021; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Kentucky Transportation Cabinet may be found on the department's website at: <http://maps.kytc.ky.gov/PAFOA/>.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: October 14, 2021

FILED WITH LRC: October 15, 2021 at 9:19 a.m.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes amended provisions to correct first amendment constitutional issues as prescribed by the 6th Circuit Federal Court and defines prohibited and conforming activities relative to outdoor advertising in protected areas.

(b) The necessity of this administrative regulation: The administrative regulation is required by KRS 177.860 and as further demonstrated by directive of the General Assembly to promulgate the amended regulation herein.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 177.860 by establishing parameters of both prohibited and conforming activities relative to advertising devices and the safety of the users of the high-ways.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of advertising devices located within the protected area.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amended regulation removes the elements found by the court as being unconstitutional and provides the framework for an alternative, content-neutral compensation based regulatory model.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the framework of an enacted content neutral compensation based regulatory model.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation amendment furthers the statutory intent of establishing a content neutral, compensation based regulatory scheme.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will further establish parameters of both prohibited and conforming activities relative to advertising devices in protected areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Advertising Device Owners, Landowners, Advertisers, KYTC, County & City Municipalities

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Advertising Device Owners will be required to submit annual permit renewal documentation and the associated annual device renewal fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Advertising Device Owners: Applicable fees as established by KRS 177.860.

Landowners: There are no known direct financial impacts

Advertisers: There are no known direct financial impacts

KYTC: Approximately \$350,000 annually

County & City Municipalities: There are no know direct financial impacts.

(c) As a result of compliance, what benefits will accrue to the entities: Compliant industry stakeholders will be provided the benefit and protection of conducting business within a regulated industry.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$350,000.

(b) On a continuing basis: \$350,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Statutory authority providing for the assessment of permit fees, pursuant to KRS 177.860.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will continue be administered pursuant to terms of the Federal/State Agreement. The statutory authorization to assess permit fees for advertising devices is expected to cover the administrative costs relative to regulating advertising devices.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Statutory authority providing for the assessment of permit fees, KRS 177.860 was enacted. This administrative regulation further prescribes the application of the fee assessment.

(9) TIERING: Is tiering applied? No, all advertising devices will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Highways, Division of Maintenance, KYTC District Offices, KYTC Office of Legal Services, and County and City Local Municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 131.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$300,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$300,000.

(c) How much will it cost to administer this program for the first year? Approximately \$350,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$350,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):
Other Explanation: