



COLORADO
Department of Transportation
Division of Project Support

2829 W. Howard Place
Denver, CO 80204-2305

Questions and Answers from Stakeholder Written Comments/Inquiries

CDOT Responses to Stakeholder Written Comments/Inquiries

The following discussion is intended to assist stakeholders who in good faith seek to better understand the new language within the rules. The following discussion should not be construed as a complete and final treatment of the topic and/or a complete position of CDOT as it applies to a specific factual scenario. CDOT reserves the right to clarify, modify, or expand upon these responses

Purpose and Intent

The purpose of the rules, 2 CCR 601-3 *et seq.*, including these rules, is to carry out the provisions of the Outdoor Advertising Act, § 43-1-401, *et seq.*, C.R.S., and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of Advertising Devices in areas adjacent to the State Highway System. The intent of the rules, including these rules, is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

Additional information on the purpose of the Outdoor Advertising Act can be found at § 43-1-402, C.R.S. The legislative intent behind SB21-263 can be found in the bill texts (<https://leg.colorado.gov/bills/sb21-263>) and in the legislative hearings on the bill.

The changes in the rules are to update the rules with the changes made to the Outdoor Advertising Act. The rules further update materials incorporated by reference and provide a section for declaratory orders.

Questions related to the terms “Advertising Device” and “Compensation”:

- 1. “When a payment of a fee is made to a local government (that is required) prior to erection of any sign/advertising device, will that be considered “compensation” by CDOT?”**

The payment of a permit fee required by either a relevant local government or CDOT is not considered “Compensation.”



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- 2. “When a person or an entity pays a monetary sum to physically purchase a sign/advertising device to be erected, does that constitute an exchange of anything of value (compensation) for that sign’s existence?”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the actual act of the purchase of materials used in the erection of a sign or Advertising Device. No - the actual act of the purchase of materials used in the erection of a sign or Advertising Device is not considered “Compensation.” The actual act of the purchase of materials is not regulated by CDOT.”

- 3. “When a sign/advertising device owner pays a monetary fee to have the sign/advertising device installed (responsible for the sign/advertising device’s erection), does that create an advertising device under CDOT’s regulatory authority?”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the cost of labor and materials used to erect a sign or Advertising Device structure. No - the cost of labor and materials used to erect a sign or Advertising Device structure are not considered “Compensation.” The act of installation is not regulated by CDOT, though the sign structure must comply with other laws and rules (e.g., size).

- 4. “Since memorandum of agreements must be legal (such as the ones issued for permit numbers 10685 and 10686 that have been operating for over 10 years under one) can [Mountain States Media, LLC] get CDOT to issue me one for the location [Mountain States Media, LLC] have in dispute with CDOT (I-25/highway 119 location).”**

This question is unrelated to the changes to the rules.

- 5. “Whether a franchisee needs a CDOT permit for the display of its franchisor’s signage along a state highway, where the franchisee pays compensation to the franchisor for the erection of such signage;”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the cost of labor and materials used to erect a sign or Advertising Device structure. No - the cost of labor and materials used to erect a sign or Advertising Device structure are not considered “Compensation.” The act of installation is not



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regulated by CDOT, though the sign structure must comply with other laws and rules (e.g., size).

- 6. “Whether a sign company that owns a client’s sign and leases it to the client (as a financing mechanism) must obtain a CDOT permit as a result of the lease arrangement.”**

This question suggests the sign is being used as a “financing mechanism”, which indicates an exchange of value is being made for the sign. Therefore, in this question, the sign would be subject to CDOT’s outdoor advertising permitting requirements, among other regulatory control.

- 7. “Whether a commercial real estate broker needs a CDOT permit for the display of a sign on a client’s property along a state highway, where the landowner pays compensation to the broker to market the property; []”**

This question suggests that with respect to the sign that compensation is not being paid or earned in exchange for the erection or existence of the sign, rather, earned as a result of the sale of the property. The sale of property is not regulated by CDOT.

- 8. “If a property owner leases out their building/sign to another entity (landlord/tenant relationship) and part/all of the rent paid includes the use of a structure to advertise on, does that constitute the exchange of anything of value (compensation) thereby, creating an advertising device?”**
- 9. “Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit; []”**
- 10. “Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant’s behalf would need a CDOT permit.”**
- 11. Could “any retail or office tenant paying its lease to the owner of a building [] be considered as “indirectly paid” compensation for the display of the tenant’s name or message on a wall sign or freestanding sign structure[?]”**



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In response to Questions 8 - 11 above, hypothetical sign sites and sign scenarios cannot be uniformly commented on by CDOT.

Because there are factual circumstances unique to a hypothetical sign site and sign scenario, this would be a case-by-case determination that CDOT cannot uniformly answer. Additionally, a hypothetical sign site and sign scenario may be impacted by relevant local government determinations.

The public should continue to operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered “Compensation.” In the event “Compensation” is paid or earned and other definitional elements are met, the sign would be considered an “Advertising Device” regulated by CDOT. In that event, a permit must be obtained. If “Compensation” is being exchanged, the applicant will need to apply for a CDOT permit. If there is any uncertainty as to whether a sign is an “Advertising Device” or not, the property owner or sign owner can access CDOT guidance online or submit a permit application to CDOT. During this transitional time, and to accommodate good faith questions there is no fee charged for processing a permit application.

Questions related to spacing:

- 12. “Sign owners, businesses, governmental, civic, and religious organizations also need to know how CDOT will deal with spacing requirements as the number of signs subject to CDOT permit requirements mushrooms—that is, who will get to display (or continue to display) their signs and who will not, and who will get to build new signs and who will not.”**

This question is unrelated to the changes to the rules. The rules do not contemplate changes to spacing rules.

Questions related to protecting the night sky:

- 13. Can CDOT add language to the rules that would require shielding to protect the night sky?**

This question is unrelated to changes to the rules. The rules do not contemplate changes related to the topic of shielding the night sky.



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Questions related to “Advertising Devices” on Scenic Byways:

14. Will signage for businesses be impacted along scenic byways?

Pursuant to § 43-1-419, C.R.S, no newly erected “Advertising Devices” will be permitted by CDOT along scenic byways. Only those signs for which “Compensation” is not being exchanged may remain in existence or be newly erected along scenic byways.

Questions related to Rule 12.00 Changeable Electronic Variable Message Sign (“CEVMS”):

15. What will become of CEVMS that were previously classified as “On-Premise” with respect to spacing and remote monitoring requirements?

The changes to the rules relating to CEVMS spacing (Rule 12.C.2.a) and remote monitoring (Rule 12.C.5(3)) apply only to “Advertising Devices”. If “Compensation” is not being exchanged the sign is not considered an “Advertising Device” under the rules and, therefore, those CEVMS spacing and remote monitoring rules do not apply.