



**MEMORANDUM**

To: Board of County Commissioners

From: Cody Smith, PE, County Engineer/Assistant Road Department Director

Date: August 24, 2023

Subject: Proposed Amendments to DCC 10.05 – Right of Way Signs

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Oregon Revised Statutes (ORS) provide the following regarding the placement of signs other than traffic control devices within county road rights of way:

**ORS 368.942 Posting notices, signs or pictures on structures within county road right of way prohibited.** *Except as provided in ORS 368.950, no person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever within the limits of the right of way of any county road any written, printed or painted advertisement, bill, notice, sign, picture, card or poster, except within the limits of any incorporated city through which the county road runs.*

**ORS 368.945 Authority of county road official to remove unlawfully posted matter.** *A county road official may lawfully remove or destroy, without resort to legal proceedings, any advertisement, bill, notice, sign, picture, card or poster placed in violation of ORS 368.942.*

**ORS 368.950 Applicability of ORS 368.942 and 368.945.** *ORS 368.942 and 368.945 do not apply to:*

- (1) The posting or maintaining of any notice required by law to be posted or maintained;*
  - (2) The placing and maintaining, within the limits of the right of way of any county road, of:*
    - (a) Signs approved by the county governing body and giving information about scenic, historical, resort or recreational areas;*
    - (b) Signs approved by the county governing body and giving information about community or civic enterprises of a noncommercial nature, or the proximity of tourist facilities, directions or distances for the information of the traveling public;*
    - (c) Facility location signs of a public utility or telecommunications utility, when such signs are approved by the county governing body;*
    - (d) Benches utilized as outdoor advertising signs, if approved by the county governing body;*
- or*

*(e) Outdoor advertising signs on bus shelters erected or maintained for use by and convenience of customers of a mass transit district, a transportation district or any other public transportation agency, when such signs are approved by the county governing body.*

**368.955 Posting notices, signs or pictures within view of county road on property of another without consent prohibited.** *No person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever on the property of another within view of a county road, without the written consent of the owner or person entitled to possession of such property, any written, printed or painted advertisement, bill, notice, sign, picture, card or poster.*

Deschutes County Code (DCC) 10.05 provides requirements and procedure for the permitting and placement of temporary activity signs and tourist and motorist-oriented directional signs within public road rights of way under Deschutes County's jurisdiction. Inexplicably, DCC 10.05.040 allows for the permitting of political signs as temporary activity signs within a public road right of way.

Road Department staff find that the permissibility of political signs within public road rights of way under Deschutes County Code and the burden for the Department to administer this program are extremely problematic for several reasons:

- **Road User Safety Concerns** - The improper placement of temporary activity signs along a road can compromise the safety of road users by interfering with traffic control devices, restricting sight lines, or causing distraction. Political campaign signs comprise virtually all of the temporary activity sign permits issued by the Road Department and have created numerous road safety concerns in recent years.
- **Lack of Statutory Authority** – Road Department staff do not believe that ORS 368.950 gives a county governing body the authority to permit the posting of political signs in public rights of way under their jurisdiction. Temporary activity signs authorized under the statute include signs “ .. giving information about community or civic enterprises of a noncommercial nature.”
- **Residual Property Rights** – Road rights of way under Deschutes County jurisdiction generally consist of easements for public ingress and egress over land, leaving certain residual property rights with owners of underlying or abutting property (see ORS 93.310(4), ORS 271.140, and ORS 368.366. Temporary activity signs within these rights of way can be problematic when the underlying or abutting property owner does not consent to the placement of a sign that is not an official traffic control device or that is not otherwise necessary to meet the needs of road users (i.e., political signs). Further, ORS 368.955 prohibits the placement of such signs within view of a county road without the consent of the property owner. Road Department staff assert that this would include consent by an abutting property owner whose fee ownership generally extends to the centerline of a public road right of way.
- **State and Countywide Inconsistency** - Deschutes County appears to be the only public road agency in Oregon that permits political signs in their rights of way. The County's current permitting of political signs within public rights of way is inconsistent with rules and messaging from all other public road agencies in Deschutes County and Oregon who actively prohibit political signs on their rights of way.

- **Administration and Enforcement** – The administration, monitoring and, regulation of political campaign signs in the public rights of way takes up significant capacity of Road Department staff in the weeks prior to elections. Issues include;
  - Mediating matters related to visually-conflicting political signs among opposing campaigns;
  - Opposing campaigns checking the status of each other’s permits;
  - Property owners upset about signs located along their frontage;
  - Other road agencies requesting intervention for signs placed at the intersections of their roads and county roads.

With these reasons in mind, Road Department staff are proposing a text amendment to DCC 10.05 to remove the permissibility of political signs within the public right of way.

Additionally, the proposed text amendment for DCC 10.05 includes modernization of other portions of the code chapter to clarify procedures for permitting of temporary activity signs and tourist/motorist – oriented directional signs.