EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

December 28, 2018

Vice Speaker Therese M. Terlaje
34GL-18-2703
DEC 28 2018
Time: 16:21
Received by:

The Honorable Therese M. Terlaje
Interim Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa, Hagåtña, Guam 96910

2018 DEC 28 PM 4:42

Håfa Adai Madame Speaker:

Attached is Bill No. 154-34 (COR) entitled, *"An Act to Add a New §61547 of Chapter 61 of Title 21, Guam Code Annotated, Relative to Off-Premise Signage. . .,"* which I have **VETOED.**

Bill 154 seeks to regulate off-premise signs, which are signs that advertise goods or services from facilities that are located on premises other than the premises on which the sign is located. Although the bill's intent is good, by treating all signs the same regardless of whether the sign is digital or static, the measure imposes arbitrary standards that are not based on rational safety and zoning factors.

For example, the bill provides that the minimum distance between signs from either side along any road is 3,500 feet. This means that if a sign is erected, there can be no other signs erected within 3,500 feet of that same sign on either side of the road. No particular safety standard appears to be associated with this requirement, other than 3,500 ft. happens to be the difference between the existing digital signs on Marine Corps. Drive. By prohibiting the erection of any other off-premise signs within 3,500 feet of the already existing digital signs, the bill effectively creates a monopoly in favor of the digital signs.

Overall, the proposed legislation tends to create more ambiguities than it attempts to resolve. There is no doubt that signs need to be regulated, but the regulations should be based on documented and rational safety and zoning factors.

Senseramente,

EDDIE BAZA CALVO
Governor of Guam

2703

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Bill No. 154-34 (COR), "AN ACT TO *ADD* A NEW § 61547 AND *AMEND* § 61545, BOTH OF SUBARTICLE 5, ARTICLE 5, AND ADD A NEW § 61616(m) OF SUBARTICLE 2, ARTICLE 6, ALL OF CHAPTER 61, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO PERMITTING AND REGULATING OFF-PREMISE SIGNAGE, AND EXPANDING THE PENALTY FOR SIGNAGE VIOLATIONS AND INCLUDING A FINE FOR DELAYED ACTION ON SUCH VIOLATIONS,"** was on the 17th day of December 2018, duly and regularly passed.

Therese M. Terlaje
Acting Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 17th day of Dec, 2018, at 5:30 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED: VETO

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date:_____

Public Law No._____

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 154-34 (COR)
As corrected by the Prime Sponsor;
amended by the Committee on Environment,
Land, Agriculture and Procurement Reform;
and further amended on the Floor.

Introduced by: Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* A NEW § 61547 AND *AMEND* § 61545, BOTH OF SUBARTICLE 5, ARTICLE 5, AND *ADD* A NEW § 61616(m) OF SUBARTICLE 2, ARTICLE 6, ALL OF CHAPTER 61, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO PERMITTING AND REGULATING OFF-PREMISE SIGNAGE, AND EXPANDING THE PENALTY FOR SIGNAGE VIOLATIONS AND INCLUDING A FINE FOR DELAYED ACTION ON SUCH VIOLATIONS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that Guam's forty (40) year old statute regulating outdoor signage allows only for

"On Premise" advertising signage. More specifically, messages allowed on outdoor signage are limited to: (a) information pertaining to the products and services provided by businesses located within or on the premises; (b) signs that shall be non-flashing and non-moving; and (c) signs that must adhere to size limitations. The current law has not been amended since its enactment to incorporate advances in the signage industry.

I Liheslaturan Guåhan further finds that in embracing modern marketing concepts and signage technology, public policy would be needed to ensure that off-premise signs, digital or static, do not distract drivers and endanger public safety on Guam's roads, the aesthetics of the community environment are protected, and that off-premise signs are placed and operated in a manner that does not harm the surrounding property values. Managed properly, off-premise signage can provide significant public and economic benefit, including the ability to disseminate important public service announcements in a timely manner, such as Amber Alerts and storm warnings.

I Liheslaturan Guåhan intends to authorize the use of off-premise signage, to include electronic signage and static billboards, and to regulate the construction and operation of off-premise signage. The regulatory aspects of this legislation will include limitations on off-premise signs to maintain compatibility with the land, building, or use which they are appurtenant to and are adequate for their intended purpose while balancing the individual and community interests. This Act does not regulate every form and instance of visual communication that may be displayed within the jurisdictional limits of the community. Rather, this Act intends to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth in this Section.

Section 2. A new § 61547 is hereby *added* to Subarticle 5, Article 5, Chapter 61, Title 21, Guam Code Annotated, to read:

"§ 61547. **Permitting and Regulation of Off-Premise Signage.**

(a) Purpose. The purpose of this Section is to:

(1) permit the construction and operation of off-premise signage; and

(2) regulate off-premise signs operated on private or public property, pertaining to limitations related but not limited to, location, height, size, illumination, and image movement.

(b) Definitions of Sign Types.

(1) *Digital billboard*: A sign that changes messages by any electronic process or remote control.

(2) *Freestanding*: A sign erected and maintained on a frame, mast, or pole not attached to any building, and not including ground mounted signs.

(3) *Government sign*: A government sign is a sign that is constructed, placed or maintained by the federal or local government, or a sign that is required to be constructed, placed or maintained by the government either directly or to enforce a property owner's rights.

(4) *Ground mounted*: A sign which extends from the ground, or has support which places the bottom of the sign less than two (2) feet from the ground.

(5) *Legal non-conforming off-premise sign*: Off-premise signs that were approved by the government of Guam and erected in accordance with stipulations provided by the government of Guam prior to the adoption of this ordinance and which do not conform to the provisions of this ordinance are declared legal non-conforming signs. A sign that is erected and that is in place and which conforms to the provisions of the sign ordinance at the time it is erected, but which does

not conform to an amendment to this ordinance enacted subsequent to the erection of said sign, is also declared a legal non-conforming off-premise sign.

(6) *Off-premise sign*: A sign which advertises goods, products or services which are not sold, manufactured or distributed on or from the premises or facilities on which the sign is located.

(7) *Original art display*: A hand-painted work of visual art that is either affixed to or painted directly on the exterior wall of a structure with the permission of the property owner. An original art display does not include: mechanically produced or computer generated prints or images, including, but not limited to, digitally printed vinyl; electrical or mechanical components; or changing image art display.

(8) *Portable sign*: Any structure without a permanent foundation or otherwise permanently attached to a fixed location, which can be carried, towed, hauled or driven, and is primarily designed to be moved rather than be limited to a fixed location regardless of modifications that limit its movability.

(9) *Sign*: A name, identification, description, display or illustration, which is affixed to, painted or represented directly or indirectly upon a building, or other outdoor surface which directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business. Signs located completely within an enclosed building, and not exposed to view from a street, must not be considered a sign. Each display surface of a sign or sign face must be considered to be a sign.

(10) *Sign area*: the space enclosed within the extreme edges of the sign for each sign face, not including the supporting structure; or,

where attached directly to a building wall or surface, the space within the outline enclosing all the characters of the words, numbers or design.

(11) *Sign face*: The entire display surface of a sign upon, against or through which copy is placed.

(12) *Static sign:* A sign that does not display motion graphics or motion pictures.

(13) *Temporary*: A banner, pennant, poster or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood, or other like materials, and that appears to be intended or is determined by the code official to be displayed for a period not to exceed thirty (30) days from the date of installation.

(14) *V-Type Sign*: An off-premise sign structure which consists of multiple sign facings placed at angles to each other, oriented in different directions and not exceeding ten (10) feet apart at the nearest point to each other.

(c) Permit Required.

(1) General. A sign permit is required prior to the display or erection of any off-premise sign, except as provided by this Chapter.

(2) Application for Permit.

(A) An application for a sign permit must be filed with the Department of Public Works Director, or his designee, on forms furnished by the Department of Public Works (DPW). The applicant must provide sufficient information to determine if the proposed sign is allowed under this Code and other applicable federal and local laws and regulations. An application for a temporary sign must state the dates intended for the erection and

removal of the sign. An application for any sign must state the date when the owner intends to erect it.

(B) The application *shall* be accompanied by complete information as required on forms provided by DPW and shall include, but not be limited to, a site plan and elevation drawings of the proposed off-premise sign, indicating the proposed location of the sign, setbacks, height, dimensions and square footage of the proposed sign, and any other data as DPW may determine is necessary for review of the application.

(C) In the case of new building construction, off-premise signage may be represented on the project's DPW building permit application and construction plans.

(D) Failure to secure a permit prior to construction or installation of the sign *shall* constitute a violation of this Section and be subject to penalties as provided by this Chapter.

(E) DPW *shall* provide a copy of the permit application and accompanying plans to the respective municipal Mayor for comments to ensure conformity to the provisions of this Section; however, DPW's decision is final in all such matters.

(F) DPW *shall* process the sign permit application for approval or rejection and notify the applicant within forty-five (45) days after receipt.

(G) If the application is rejected, DPW must provide, in writing, the reason for the rejection. An application must be rejected for non-compliance with the terms of this Section, the zoning ordinance, building code, or other applicable law, regulation, or ordinance. An applicant may within fifteen (15)

days from the date of rejection file a written appeal for a variance to the Guam Land Use Commission (GLUC), which shall exercise its powers pursuant to Article 6 of this Chapter.

(H) Failure to erect the sign within one (1) year of the date of notice of approval of the application by DPW, or notice of approval by the GLUC in the case of an application requiring a variance, *shall* result in the permit being voided.

(I) Maintenance of signs *shall not* require a permit, provided that such maintenance does not alter the location, dimensions, or make any other material change that DPW determines not to match the specifications of the sign originally permitted.

(J) Any transfer of ownership for an existing permitted off-premise sign *shall* require approval from DPW, and *shall* be recorded in the Records Division of the Department of Land Management; in such case, a transfer fee *shall* apply in an amount equal to a new permit.

(3) Permit Fee. A non-refundable fee of Four Hundred Dollars ($400) paid to the government of Guam *shall* accompany all off-premise sign permit applications.

(A) Permit Renewal. Permits *shall* be renewed every four (4) years, at which point a similar fee *shall* be assessed.

(B) Forfeiture of Fees. When any permit has been revoked or application rejected under the terms of this Section, the respective permit fee *shall not* be refunded.

(4) Duration and Revocation of Permit. The permit for a temporary sign must state its duration, not to exceed thirty (30) days.

DPW may revoke a sign permit under any of the following circumstances:

(A) DPW determines that information in the application was materially false or misleading;

(B) mistake of material facts by the issuing authority for which, had the correct facts been made known, the sign permit in question would not have been issued;

(C) the sign as installed does not conform to the sign permit application;

(D) failure to construct the off-premise sign structure within the timeframe stipulated on the approved application;

(E) any alteration of a sign structure for which a permit has been issued which would cause that sign structure to fail to comply with the provisions of this Act;

(F) the sign violates this Act, zoning laws, the building code, or any other applicable law or regulation, either federal or local; or

(G) DPW determines that the sign is not being properly maintained or has been abandoned.

(5) Permits Not Required. An off-premise sign permit is not required for any official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of official or directed duties; provided, that all such signs must be removed no later than ten (10) days after their purpose has been accomplished.

(d) Off-Premise Sign Regulations by Property Zoning. The following off-premise sign regulations *shall* apply as indicated:

(1) Residential (R) and Agricultural (A) Zones. Off-premise signs are not permitted on residential or agricultural zoned property.

(2) Commercial (C), Industrial (M) and Hotel (H) Zones. This Section *shall* apply to all C, M, and H zoned property.

(A) Off-Premise Sign Measurement Regulations:

(i) All applicable building codes *shall* be complied with.

(ii) Sign face *shall not* exceed two hundred (200) square feet.

(iii) Sign face dimensions *shall not* exceed the following limits:

(aa) width of twenty-five (25) feet;

(bb) height of twenty (20) feet;

(iv) overall height of sign, from ground level to top of sign frame, *shall not* exceed thirty (30) feet;

(v) setbacks and intervals *shall* be limited as follows:

(aa) Minimum setback and intervals *shall* be as follows:

Minimum Distance	
From Intersection	Between Signs (either side along any road)
100 ft. from the closest point of the intersection at the edge of road	3,500 ft.

(bb) For the purpose of applying the interval distance requirements above, the following shall apply:

(1) distances must be measured parallel to the centerline of adjacent roadway;

(2) Reference Point. Measurements for the interval distance between signs *shall* be based on the distance to/from a previously approved sign, constructed or soon to be constructed pursuant to an approved Notice of Action. In the event multiple permit applications along the same roadway are under consideration, either by DPW or GLUC, the location of the earlier dated sign permit application under review *shall* take precedence.

(3) Sign Faces Allowed. A maximum of three (3) faces per off-premise sign structure is allowed, positioned either back to back or v-shaped, such that only one (1) face is allowed per side. In no case shall there be more than one (1) face per directional flow of traffic.

(4) Setbacks. Minimum setback distances shall be ten (10) feet from the edge of property line.

(5) Height. Freestanding off-premise signs must not exceed thirty (30) feet in height from ground level.

(B) Location.

(i) Freestanding off-premise signs must have a minimum clearance of eight (8) feet six (6) inches above a sidewalk and fifteen (15) feet above driveways or alleys.

(ii) A freestanding off-premise sign may project up to a right-of-way, provided there is a minimum ground clearance of eight (8) feet six (6) inches and provided the location complies with all federal and local statutes.

(iii) Wall signs must not extend above the top of a parapet wall or a roofline at the wall, whichever is higher.

(e) Illumination. Illumination of off-premise signs *shall* be regulated as follows:

(1) Reflective type bulb, par spot or incandescent lamp, which exceeds twenty-five (25) watts, *shall not* be exposed to direct view from a public street or highway; however, it may be used for indirect light illumination of the display surface of an off-premise sign.

(2) Any digital display, as well as all other lighting on or related to an off-premise sign, *shall* include a device, such as a variable control regulator, to modulate the brightness of the light.

(3) When neon tubing is employed on the exterior or interior of an off-premise sign, the capacity of such tubing must not exceed three hundred (300) milliamperes rating for white tubing or one hundred (100) milliamperes rating for any colored tubing.

(4) When fluorescent tubes are used for the interior illumination of an off-premise sign, such illumination must not exceed an equivalent to eight hundred (800) milliampere rating tubing behind a plexiglass face spaced at least nine (9) inches, center to center.

(5) Digital billboards allowed pursuant to this Section must:

(A) not operate at an intensity level of more than 0.3 foot-candles over ambient light as measured at a distance of one hundred fifty (150) feet;

(B) be equipped with a fully operational light sensor that automatically adjusts the intensity of the billboard according to the amount of ambient light;

(C) change from one (1) advertisement to another advertisement no more frequently than once every ten (10) seconds and the actual change process is accomplished in two (2) seconds or less;

(f) Prohibited Off-Premise Signs. The following signs or lights are prohibited:

(1) the size, location, movement, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal;

(2) temporary signs that contain or consist of banners, posters, pennants, ribbons, streamers, strings of light bulbs, spinners, or other similarly moving devices or signs which may move or swing as a result of wind pressure. These devices when part of any sign are similarly prohibited, unless they are permitted specifically by the granting of a variance;

(3) have blinking, flashing or fluttering lights or other illuminating devices which exhibit movement, except digital billboards as permitted pursuant to this Section;

(4) an original art display that does not have the permission of the owner of the property on which it is located, or is graffiti; or

(5) portable signs that do not comply with the location, size or use restrictions of this Section.

(g) Compliance. The provisions of this Section *shall not* apply to mobile signs on vehicles or trailers.

(h) Maintenance of Off-premise Signs. The maintenance of off-premise signs *shall* be the responsibility of the sign owner.

(1) Standards. An off-premise sign must remain substantially the same as it was as of the date it became permitted.

(2) Reasonable repair and maintenance of off-premise signs, including change of advertising message, is permitted and is not a change which would affect the legal status. Reasonable repair and maintenance means the work necessary to keep the sign structure in a state of good repair, including the replacement in kind of materials in the sign structure.

(3) An off-premise sign may continue to exist so long as it is not destroyed, abandoned, or discontinued. "Destroyed," "abandoned," and "discontinued" have the following meanings:

(A) "Destroyed" means more than sixty percent (60%) of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would call for, in the case of wooden sign structures, replacement of the broken supports and, in the case of a metal sign structure, replacement of at least twenty-five percent (25%) of the length above ground of each broken, bent, or twisted support. A sign will not be considered "destroyed" within the meaning of this Section where

the destruction is caused by natural disaster, vandalism, or other criminal or tortious act.

(B) An off-premise sign is "abandoned" or "discontinued" when a sign structure no longer exists at the permitted location or the sign owner fails to operate and maintain the sign for a period of twelve (12) months or longer. Signs displaying bona fide public interest messages are not "abandoned" or "discontinued" within the meaning of this Section.

(4) No sign shall have more than twenty percent (20%) of its surface area covered with disfigured, cracked, ripped or peeling paint or poster paper for a period of more than fifteen (15) consecutive days.

(5) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts for a period of more than fifteen (15) consecutive days.

(6) The vegetation or landscape surrounding the immediate area of the off-premise sign *shall* be properly maintained.

(7) No directly or indirectly illuminated sign may be allowed to stand with only partial illumination for a period of more than fifteen (15) consecutive days.

(i) Enforcement. The Department of Public Works *shall* be responsible for inspecting all signs for compliance with the maintenance requirements of this Section.

(j) Conflicts of Regulations. Where there is a conflict between a land use regulation and a structural regulation, or other conflicts not otherwise addressed by this Section, the most restrictive regulation applies.

(k) Existing Off-Premise Signage. Any off-premise sign which has been granted a variance by the Guam Land Use Commission, or has been issued a Notice of Action from the Guam Land Use Commission on or before May 15, 2017, *shall* be deemed a legal non-conforming off-premise sign and legally authorized to operate; provided, that all business license requirements are met and are thereafter maintained in good standing as stated in § 61543(c) of this Chapter. Signs which do not conform to this Section must be removed immediately."

Section 3. § 61545 of Subarticle 5, Article 5, Chapter 61, Title 21, Guam Code Annotated, is *amended* to read:

"**§ 61545. Penalty.**

Any person who violates a provision of this Chapter *shall* be guilty of a civil violation and subject to a civil penalty not to exceed One Thousand Dollars ($1,000) for each such violation. Should such violation(s) not be corrected within fifteen (15) days of receipt of notice of violation from the Department of Public Works, said person *shall* be subject to an additional late action civil penalty not to exceed Three Hundred Dollars ($300) per day for each remaining violation. Failure to pay penalties and to rectify the violations may result in the termination or non-renewal of its sign permit. The Director of Public Works *shall* have the authority to waive part or all of the late action penalty should the violator demonstrate a good faith effort to address the violation in a timely manner; provided, that such waiver is limited to no more than thirty (30) days. Actions to recover the penalty provided for in this Section *shall* be brought by the Attorney General of Guam at the request of any person on Guam. All penalties recovered in any such action *shall* be paid into the General Fund."

Section 4. A new Subsection (m) is *added* to § 61616 of Subarticle 2, Article 6, Chapter 61, Title 21, Guam Code Annotated, to read:

"(m) Permit off-premise signage pursuant to § 61547."

Section 5. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.