

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

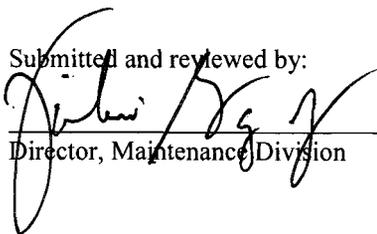
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §22.11, Definitions, and §22.17, Memorial Markers, relating to use of state highway right of way, both to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §22.11 and §22.17 are adopted and are authorized for filing with the Office of the Secretary of State.

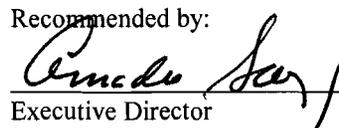
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Maintenance Division

Recommended by:



Executive Director

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Minute
Number

Date
Passed

1
2 Amendments to §22.17(a) clarify the purpose of the program. The
3 memorial marker program is expanded to include all peace
4 officers and this change is reflected in the new language.
5 Throughout §22.17, references to "trooper" are replaced with
6 "peace officer" to address the changes to the program. The
7 amendments also clarify that only state highway right of way is
8 eligible for a marker under this program and that the markers
9 must be privately funded.

10
11 Amendments to §22.17(c)(2)(F) clarify that the written
12 certification must come from the governmental entity that
13 employed the peace officer. This change was needed to address
14 the expansion of the program beyond state troopers.

15
16 Amendments to §22.17(g) clarify where the memorial marker should
17 be placed on the highway. The current rule references the
18 "clear zone," as defined in the department's design manual.
19 This term gave little guidance to a person unfamiliar with the
20 design manual. The amendments provide for a location of a
21 memorial that can be more easily identified by a requestor
22 without requiring the requestor to review the design manual. In
23 addition, placement of the marker close to the right of way line
24 provides for the safest location of the marker. This change
25 will help eliminate confusion and questions regarding location

1 of the sign.

2

3 COMMENTS

4 No comments were received on the proposed amendments.

5

6 STATUTORY AUTHORITY

7 The amendments are adopted under Transportation Code, §201.101,
8 which provides the Texas Transportation Commission (commission)
9 with the authority to establish rules for the conduct of the
10 work of the department, and more specifically, Transportation
11 Code, §201.910 which requires the commission by rule to adopt a
12 program that authorizes memorial markers honoring peace officers
13 killed in the line of duty.

14

15 CROSS REFERENCE TO STATUTE

16 Transportation Code, §201.910.

1 SUBCHAPTER B. USE OF STATE HIGHWAY RIGHT OF WAY

2 §22.11. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Area engineer--The chief administrative officer in
6 charge of an area office of the department.

7 (2) Area office--An office responsible for carrying out
8 the department's primary functions at the local level for a
9 designated geographical area within a district.

10 (3) Arterial roadway--A roadway which contains
11 predominately at-grade intersections, allows continuous access
12 to abutting property, and has posted speeds equal to or less
13 than 45 miles per hour.

14 (4) Banner--A sign painted or fabricated on fabric mesh
15 or flexible plastic above or along a roadway or highway.

16 (5) BC Sheets--The latest edition of Barricade and
17 Construction Standards published by the department.

18 (6) Closure--The temporary direct or indirect
19 restriction, in whole or in part, of vehicular use of a segment
20 of the state highway system. This includes, but may not be
21 limited to, the main lanes (including service roads, ramps, and
22 connectors) and the shoulders of any numbered highway on the
23 state highway system.

1 (7) Commission--The Texas Transportation Commission.

2 (8) Compliant Work Zone Traffic Control Device List--A
3 list of all work zone traffic control devices that have been
4 determined by the department to be crashworthy based on the
5 criteria contained in National Cooperative Highway Research
6 Report 350: Recommended Procedures for the Safety Performance
7 Evaluation of Highway Features. A copy of this list is
8 available on the department's website, or by contacting the
9 department's Traffic Operations Division or the appropriate area
10 engineer.

11 (9) Controlled access highway--In accordance with
12 applicable state law, the main lanes and shoulders of a state
13 highway on which owners or occupants of abutting lands and other
14 persons are denied access to or from the highway except at such
15 points only and in such manner as may be determined by the
16 department.

17 (10) Department--The Texas Department of Transportation.

18 (11) District--A subdivision of the department
19 responsible for the day-to-day operations of the department in a
20 specific geographically defined area.

21 (12) District engineer--The chief administrative officer
22 of a district of the department or his or her designee.

23 (13) DPS--The Texas Department of Public Safety.

1 (14) Edible agricultural commodity--Any product produced
2 and sold for human consumption.

3 (15) Executive director--The chief administrative officer
4 of the department.

5 (16) Film and video production--The on-location creation
6 of a film or video project including, but not limited to,
7 feature films, television productions, television commercials,
8 documentaries, music videos, and corporate or industrial
9 communication productions.

10 (17) Non-profit corporation--A corporation that is
11 incorporated or holds a certificate of authority under the Texas
12 Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-
13 1.01 et seq.

14 (18) Peace officer--A law enforcement officer or peace
15 officer of this state or a political subdivision of this state
16 or a federal law enforcement officer or special agent performing
17 duties in this state.

18 (19) [~~+18~~] Person--An individual, corporation,
19 organization, business trust, estate, trust, partnership,
20 association, and any other legal entity.

21 (20) [~~+19~~] Professional engineer--A person who has been
22 duly licensed by the Texas Board of Professional Engineers to
23 engage in the practice of engineering in the state of Texas.

1 (21) [~~+20~~] Requestor--A person requesting a closure or
2 use of the state highway system for a special event or
3 film/video production.

4 (22) [~~+21~~] Right of way --The entire width of land
5 between the public boundaries or property lines of a highway.

6 (23) [~~+22~~] Routine traffic control--The handling of
7 events which last no more than four hours at one location and no
8 more than nine consecutive total hours for moving events.
9 Examples of these events include parades, marches, and other
10 such events, and use authorized law enforcement personnel who
11 accept the responsibility for traffic control as being well
12 within their capabilities to protect and direct all parties
13 involved.

14 (24) [~~+23~~] Sign--Any outdoor sign, display, light,
15 device, figure, painting, drawing, message, plaque, poster, or
16 other thing that is designed, intended, or used to advertise or
17 inform.

18 (25) [~~+24~~] Special event--An event serving a public
19 purpose and sponsored by a civic or nonprofit organization,
20 including, but not limited to, fairs, festivals, bicycle events,
21 marathons, walkathons, rodeos, and charitable fund-raising
22 events, but not including political events or events that could
23 be construed to advocate or oppose a candidate for election or

1 influence the passage or defeat of a measure on an election
2 ballot.

3 (26) [~~+25~~] State highway system--The system of highways
4 in the state included in a comprehensive plan prepared by the
5 department's executive director under the direction and with the
6 approval of the commission in accordance with Transportation
7 Code, §201.103.

8 (27) [~~+26~~] Substantial negative impacts to the
9 environment--Any harm to the natural or cultural features caused
10 by any activity either directly or indirectly resulting from a
11 closure or film/video production, including, but not limited to:

12 (A) a chemical or fuel spill;

13 (B) blast or fire damage to habitat or vegetation;

14 (C) temporary or permanent placement of fill in
15 wetlands or waters in the right of way;

16 (D) alteration of a historic bridge or historic
17 roadside park;

18 (E) extensive tire tracking or other damage to the
19 contours of the site resulting in sediment runoff to water
20 bodies or wetlands; or

21 (F) any disturbance or removal of protected species
22 without proper authorization.

23 (28) [~~+27~~] Texas Film Commission--The office responsible

1 for promoting the development of the film industry in the state,
2 currently located in the Office of the Governor's Music, Film,
3 Television, and Multimedia Office.

4 (29) [~~+28~~] Traffic control--The exclusive use of law
5 enforcement personnel and their vehicles to direct and control
6 traffic, pedestrians, and other items making use of the right of
7 way, requiring very little planning and few, if any, traffic
8 control devices.

9 (30) [~~+29~~] Traffic control plan--A written description
10 consisting of text or a combination of text and diagrams that
11 describes how vehicular or pedestrian traffic will be controlled
12 during a closure or film/video production as described in this
13 subchapter.

14 (31) [~~+30~~] Traffic enforcement plan--A general
15 description in writing or a sketch showing where and how the
16 police vehicles will be used along with any supporting cones,
17 signs, or barricades, if any. This does not require an
18 engineer's expertise.

19 (32) [~~+31~~] TMUTCD--Texas Manual on Uniform Traffic
20 Control Devices.

21 [~~+32~~] Trooper--A commissioned peace officer employed by
22 the Texas Department of Public Safety.]

23 (33) Turnouts--Paved areas adjacent to the roadway

1 shoulder large enough to accommodate at least one passenger
2 vehicle.

3 (34) Workday--A non-holiday for the department and a
4 weekday, not a Saturday or Sunday.

5

6 §22.17. Memorial Markers.

7 (a) Purpose. [~~The commission determines it to be in the~~
8 ~~public interest to allow the placement, along state highway~~
9 ~~right-of-way, of privately funded memorials honoring Department~~
10 ~~of Public Safety (DPS) troopers killed in the line of duty.]~~
11 This section prescribes the process by which the department will
12 allow the placement, along state highway right-of-way, of
13 privately funded memorials honoring peace officers killed in the
14 line of duty [~~along state highway right of way~~].

15 (b) Agreement. The department may execute an agreement
16 with a non-profit corporation to fund, install, and maintain
17 memorials honoring peace officers [~~DPS troopers~~]. A corporation
18 must enter into an agreement with the department in a form
19 prescribed by the department prior to any request for approval
20 to install a memorial. Once a corporation has entered into an
21 agreement, it may request to install a memorial in a specific
22 location on the state highway right-of-way. Corporations
23 desiring to install memorials must submit notice of such

1 interest to the director of the department's Maintenance
2 Division, along with a copy of the corporation's certificate of
3 incorporation. The agreement will contain terms and conditions
4 the department deems necessary to protect the privacy of the
5 deceased peace officer [~~trooper~~] and to protect the public
6 safety, including, but not limited to:

7 (1) a statement that only memorials which honor peace
8 officers [~~DPS-troopers~~] who lost their lives in the line of duty
9 will be allowed;

10 (2) a statement that the corporation must submit a
11 separate request for each memorial it desires to install on
12 state highway right-of-way;

13 (3) a statement that the memorials will be furnished,
14 installed, and maintained at no cost to the department, and that
15 the corporation will correct any superficial or structural
16 damage done to markers within 30 days of notification for
17 superficial damage, and within 90 days of notification for
18 structural damage;

19 (4) a statement that the exact location of each memorial
20 must be approved by the department;

21 (5) a statement that the department may temporarily or
22 permanently relocate the memorials to accommodate highway
23 construction, reconstruction, maintenance or operations;

1 (6) a statement that the exact wording on the memorials
2 must be approved by the department, and that the name of the
3 company supplying the markers must not appear on the marker;

4 (7) a statement that the corporation must furnish and
5 install any initial roadside signing of the memorials which
6 meets all department requirements;

7 (8) a statement that the department will furnish
8 replacement signs if the need arises;

9 (9) a statement that the department may provide and
10 maintain turnouts, where necessary, so that motorists may view
11 the memorials;

12 (10) a statement that the corporation will not use the
13 name of the department or refer to the department in any
14 activity which is designed to collect funds or any activity
15 which may lead to the collection of funds; and

16 (11) a statement that, by approving the placement of a
17 memorial, the department is not obligated to increase
18 maintenance around the site to a level higher than it would be
19 if the memorial were not installed on the right-of-way.

20 (c) Requests for specific installations.

21 (1) A non-profit corporation with which the department
22 has entered into an agreement, desiring to install a memorial on
23 state highway right-of-way, must file a request for department

1 approval with the district in which the right-of-way is located.

2 (2) A request to install a memorial must be submitted in
3 writing to the appropriate district engineer and must, at a
4 minimum, include:

5 (A) the memorial's size and materials;

6 (B) the wording on the memorial;

7 (C) the proposed location where the memorial will be
8 installed, including county, highway, location (distance from a
9 roadway intersection, waterway intersection, county line, etc.),
10 and distance from the right-of-way line;

11 (D) written concurrence from the family of the deceased
12 peace officer [~~trooper~~];

13 (E) whether or not the requestor will provide any
14 roadside signage, such as signage indicating the distance
15 remaining until a motorist reaches a memorial marker; and

16 (F) written certification from the governmental entity
17 that employed the peace officer [DPS] that the peace officer
18 [~~trooper~~] in question was killed in the line of duty.

19 (d) Department action. The district engineer or his or her
20 designee will review the request and approve the installation of
21 the memorial, and its location, if the request is in compliance
22 with this section, subject to any additional terms and
23 conditions deemed necessary to protect the safety of the

1 traveling public. The district engineer or designee will send
2 written notice of his or her determination. If the district
3 engineer or designee does not approve the request, he or she
4 will send written notice describing the modifications needed.
5 These notifications will include, as appropriate:

6 (1) the department's approval or a requirement that a
7 revision be made in the request;

8 (2) the approved location on the right-of-way to install
9 the memorial;

10 (3) whether or not the department wishes to have a
11 representative present when the memorial is installed;

12 (4) specific times of day when the installation may
13 occur;

14 (5) the name and telephone number of a department
15 contact; and

16 (6) any other information the department deems
17 appropriate.

18 (e) Appeal. The requestor may appeal a district engineer's
19 disapproval to the executive director or his or her designee, by
20 submitting to that official by mail or facsimile a notice of
21 appeal, along with the information provided to the district
22 engineer.

23 (f) Specifications.

1 (1) All material used in the construction and
2 installation of the memorial must be approved by the department.

3 (2) The dimensions of a memorial must not exceed four and
4 one-half feet in height, two feet in width, and six inches in
5 depth.

6 (g) Location. A memorial approved for installation under
7 this section shall be placed as close to the right of way line
8 as possible unless otherwise approved by the district engineer
9 [~~far from the edge of the pavement as possible~~], and may not be
10 placed:

11 (1) in a location where it may prevent the driver of a
12 vehicle from having a clear and unobstructed view of official
13 signs and approaching and merging traffic; or

14 [~~(2) inside the clear zone as defined in the latest~~
15 ~~edition of the department's Design Division Operations and~~
16 ~~Procedures Manual; or]~~

17 (2) [~~(3)~~] where it will cause substantial negative impact
18 to landscape features or maintenance operations.

19 (h) Installation.

20 (1) Once the corporation has received the department's
21 approval to install a memorial, the corporation will have 90
22 days from the date of the approval to install the memorial.

23 (2) If the department determines the memorial has not

1 been installed according to this section, an agreement, or the
2 department's approval, the department may require the
3 corporation to relocate or remove the memorial. If so
4 requested, the corporation will relocate or remove the memorial
5 within 30 days. If the memorial has not been relocated or
6 removed after 30 days has passed, the department may remove or
7 relocate the memorial. If the department determines the
8 memorial poses a potential hazard, the department may
9 immediately relocate or remove the memorial without having first
10 notified the corporation.

11 (i) Termination of agreement. The agreement may be
12 canceled by either party for any reason upon 30 days written
13 notice to the other party. Termination of the agreement will
14 also cancel any department approval to install a memorial not
15 yet installed.