

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

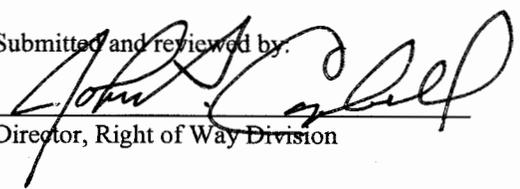
The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §§21.158 - 21.160, §21.169, §§21.172 - 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, and new §21.204 relating to Regulation of Signs Along Interstate and Primary Highways; amendments to §21.405, §21.409, §21.411, §21.416; the repeal of §21.419 and new §21.419; amendments to §§21.420 - 21.423, §21.429, and new §§21.447 - 21.457 all relating to Control of Signs Along Rural Roads to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - C, 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*.

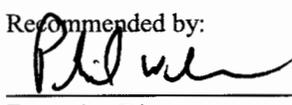
IT IS THEREFORE ORDERED by the commission that the amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §§21.158 - 21.160, §21.169, §§21.172 - 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, §21.405, §21.409, §21.411, §21.416, §§21.420 - 21.423, §21.429, the repeal of §21.419, and new §21.204, §21.419, and §§21.447 - 21.457 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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, Right of Way Division

Recommended by:

  
Executive Director

112935 DEC 15 11

Minute Number      Date Passed

Proposed Preamble

1  
2 The Texas Department of Transportation (department) proposes  
3 amendments to 43 TAC Chapter 21, Subchapter I, Regulation of  
4 Signs along Interstate and Primary Highways, §§21.144, 21.146,  
5 21.149, 21.152, 21.155, 21.158 - 21.160, 21.169,  
6 21.172 - 21.174, 21.179, 21.180, 21.183, 21.187, 21.193, 21.198,  
7 and new 21.204 and amendments to Subchapter K, Control of Signs  
8 along Rural Roads, 21.405, 21.409, 21.411, 21.416, the repeal of  
9 21.419 and new 21.419, amendments to 21.420 - 21.423, 21.429,  
10 and new 21.447-21.457, all concerning outdoor advertising.

11  
12 EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTIONS  
13 The enactment of Senate Bill 1420 by the 82nd Legislature, 2011,  
14 resulted in amendments to Transportation Code, Chapters 391 and  
15 394 dealing with the Outdoor Advertising Regulatory Compliance  
16 Program. The changes require the department to create a license  
17 process for sign owners under the rural road program. The  
18 changes also create administrative penalties for violations  
19 under Transportation Code, Chapter 391, allowing the department  
20 to develop a penalty matrix. In addition the department is  
21 making changes to address issues that have developed after the  
22 recent adoption of Subchapters I and K.

23  
24 In this preamble, the abbreviation "OAS" is used for "outdoor  
25 advertising signs" and "program" is used for "outdoor

1 advertising regulatory compliance program."

2

3 To address problems with receipt of applications and other  
4 correspondence, the department has obtained a post office box  
5 for the program. In §§21.152, 21.155, 21.159, 21.172 - 21.174,  
6 21.409, 21.420 - 21.423, and 21.449 the department has included  
7 the new post office box address and required all correspondence  
8 be mailed to that address. Having all the correspondence sent  
9 to one postal box will eliminate current issues regarding lost  
10 correspondence due to the use of local and district office  
11 contact information. The department believes this requirement  
12 also will streamline the mail process and help address priority  
13 issues.

14

15 Amendments to §21.144, License Required, are made to comply with  
16 statutory changes related to the requirement of a license for an  
17 OAS permit issued under Transportation Code, Chapter 394. This  
18 change allows a person who holds a license issued under Chapter  
19 21, Subchapter I to obtain a permit for a sign on a primary  
20 road, which is governed by Subchapter I, or on a rural road,  
21 which is governed by Chapter 21, Subchapter K. Similarly, a  
22 license issued under new §21.450 of Subchapter K will allow the  
23 licensee to obtain a permit under Subchapter I in addition a  
24 permit under Subchapter K.

25

1 Amendments to §21.146, Exempt Signs, increase the maximum size  
2 of a sign erected by a non-profit service club, charitable  
3 association, religious organization, chamber of commerce, non-  
4 profit museum, or governmental entity from 32 square feet to 50  
5 square feet, making the maximum size consistent with other  
6 exempt signs. Having the same maximum size for all exempt signs  
7 will improve consistency and enforcement. The amendments also  
8 create an exempt sign for educational institutions. The rule  
9 sets the maximum area that the business entity's logo or emblem  
10 may occupy at twenty-five percent of the total area of the sign  
11 face, specifies the overall height limit to be 42 and one half  
12 feet to be consistent with all other outdoor advertising sign  
13 height restrictions, and sets the maximum total area of 200  
14 square feet for an exempt sign face facing in a particular  
15 direction of travel. This rule exempts school, college,  
16 university, and non-profit agricultural fair signs, such as  
17 those acknowledging sports, scholastic, and agricultural  
18 achievements, regardless of who pays for the sign or where the  
19 sign is located. The size of an exempt sign for a ranch or farm  
20 is also expanded from 32 square feet to 50 square feet to be  
21 consistent with the limitations on other exempt signs.

22  
23 Amendments to §21.149, Non-profit Sign Permit, clarify that a  
24 sign in a political subdivision may qualify as a non-profit sign  
25 if the sign is advertising or promoting that political

1 subdivision or an adjacent subdivision. This change  
2 accommodates the current practice by the department to allow  
3 counties to have non-profit signs. These amendments also allow  
4 the sign owner to obtain a license under new §21.450 in order to  
5 convert a non-profit sign to a general OAS. This change  
6 accommodates the new license process under the rural road  
7 program.

8  
9 Amendments to §21.158, License Revocation, alert license holders  
10 that the total number of enforcement proceedings that result in  
11 a revocation of a license including all permits issued under  
12 that license for signs under Transportation Code, Chapters 391  
13 and 394. This change is needed to address the new license  
14 requirement for rural road OAS.

15  
16 Amendments to §21.160, Applicant's Identification of Proposed  
17 Site, streamline the site review process and prevent errors in  
18 erecting the OAS structure. The identification requirement is  
19 changed so that the applicant identifies the location of the  
20 edge of the proposed sign structure by setting a stake or  
21 marking the concrete at the edge of the sign structure closest  
22 to the right of way line. This change assures that the sign  
23 face does not encroach into state right of way and addresses  
24 problems that may arise when the sign will not have a center  
25 pole.

1

2 Amendments to §21.169, Notice of Sign Becoming Subject to  
3 Regulation, allow a license issued under new §21.450 to be used  
4 for signs that become subject to regulation because of changes  
5 in circumstance. These amendments are necessary because of the  
6 statutory change requiring a license under Transportation Code,  
7 Chapter 394.

8

9 Amendments to §21.172, Permit Renewals, clarify the consequences  
10 of the failure to erect a sign structure within one year of the  
11 department's issuance of a permit with respect to the  
12 structure's dimensions, lighting, and number of faces. Added  
13 language allows the department to adjust the permit to reflect  
14 the dimensions, lighting, and number of faces as they exist on  
15 the date that is one year after the issuance of the permit.  
16 This language addresses problems that have developed with signs  
17 that are erected but not to the full extent of the permit. The  
18 department needs to have records that reflect the actual  
19 components of the sign structure for future enforcement and  
20 renewal actions. This change reflects current department policy  
21 on the treatment of new signs.

22

23 Amendments to §21.173, Transfer of Permit, recognize that  
24 licenses may now be issued under new §21.450. This change  
25 allows the transfer of a sign to a licensee under either

1 program.

2

3 Amendments to §21.174, Amended Permit, strengthen the overall  
4 OAS permit process by requiring a permit holder to receive the  
5 department's written approval for the amended permit before  
6 proceeding with the change. This change is needed to address  
7 the problem of a permit holder beginning to change a sign in a  
8 manner that may not be approved. The change makes that  
9 requirement clear and puts the sign owner on notice regarding  
10 what is expected. Added language strengthens the permit process  
11 by setting a one year time limit from the date of the  
12 department's approval for the sign owner to complete the  
13 maintenance or alterations to the sign, which parallels the one  
14 year requirement currently in place for permit applications and  
15 is consistent with the one-year completion provision relating to  
16 the issued permits.

17

18 Amendments to §21.179, Un-zoned Commercial or Industrial Area,  
19 add language to expand the category of qualifying commercial or  
20 industrial activities to include governmental activities. The  
21 department has considered government activities as qualifying  
22 activities. This change reflects departmental policy.

23

24 Amendments to §21.180, Commercial or Industrial Activity, remove  
25 the requirement that a qualifying commercial or industrial

1 activity must post the hours during which the activity is  
2 conducted. The department found the requirement did not address  
3 the issue as intended. For example, the requirement excluded  
4 businesses, such as hotels, that do not post hours. The  
5 department concluded that the information can be gained in other  
6 ways and the posting of hours should not be required.

7  
8 Amendments to §21.183, Signs Prohibited at Certain Locations,  
9 add language that alerts the reader that a sign may not be  
10 erected or maintained in a manner that is inconsistent with  
11 Health and Safety Code, Chapter 752 relating to the proximity of  
12 overhead electrical or communication circuits, lines, or  
13 conductors and their supporting structures and associated  
14 equipment. This is an issue that has recently been brought to  
15 the department's attention. It is not a new requirement on sign  
16 owners. However, the department believes that by adding it to  
17 the rules we will increase awareness of the existence of these  
18 restrictions.

19  
20 Amendments to §21.187, Spacing of Signs, clarify that the  
21 spacing requirements apply to permitted signs only. The  
22 department did not intend to limit spacing by the location of an  
23 on-premise or exempt sign. This amendment clarifies the  
24 department's current interpretation. The amendments also remove  
25 language that limited the minimum 1,500 foot spacing

1 requirements to freeways that are located outside of  
2 incorporated municipality boundaries. That limitation was  
3 inadvertently added in the last rule revision. The department  
4 did not intend to remove this spacing limitation for signs on  
5 freeways that are inside city limits and is unable to justify  
6 such a deletion. The Federal State Agreement requires the  
7 department to have a minimum spacing requirement between  
8 billboards. This amendment returns the spacing requirements to  
9 the limits that have been in use since the start of the program.  
10 Additionally, the amendments specify that no sign, other than an  
11 exempt sign, may be erected within five feet of any highway  
12 right of way line and that the distance is measured from the end  
13 of the sign face nearest the right of way. The department has  
14 always used the five foot buffer provision to ensure the signs  
15 do not encroach into the right of way. This new language  
16 formalizes that policy. Finally, the amendments clarify that in  
17 determining whether an application for the relocation of a sign  
18 because of a highway construction project conforms to spacing  
19 requirements, the distance of the proposed site to a former site  
20 will not be considered. The recently adopted relocation  
21 provisions resulted in the consideration of permits for signs  
22 that are no longer located at the permitted location when  
23 determining the spacing requirements for permit applications.  
24 The amendments allow the sign owners to use spacing from erected  
25 signs rather than permitted signs that are in the process of

1 being relocated.

2

3 Amendments to §21.193, Location of Relocated Sign, add language  
4 that alerts the reader that a relocated sign may not be erected  
5 or maintained in a manner that is inconsistent with Health and  
6 Safety Code, Chapter 752 relating to the proximity of overhead  
7 electrical or communication circuits, lines, or conductors and  
8 their supporting structures and associated equipment. This  
9 change is consistent with the change to §21.183. The amendments  
10 clarify that a governmental activity qualifies as a commercial  
11 or industrial activity in the relocation of a sign displaced by  
12 a highway construction project to provide consistency with other  
13 sections in Subchapter I. The amendments also remove the  
14 requirement that a relocated sign provide information about an  
15 activity that the sign was relocated near. This requirement was  
16 inadvertently added in the last rule revision and is not  
17 consistent with department procedures.

18

19 Amendments to §21.198, Order of Removal, increase the number of  
20 days for removal from 30 days to 45 days after the date that  
21 notice is sent to be consistent with all other enforcement  
22 action time lines. Having 45 days for all notices and  
23 enforcement actions provides the department and sign owner one  
24 consistent time frame.

25

1 New §21.204, Administrative Penalties, is added to comply with  
2 statutory changes. The new rule provides the process for  
3 imposing administrative penalties to correlate to administrative  
4 penalties in §21.426. A permit plate violation is set at \$150  
5 per violation. A registration or location violation is set at  
6 \$250 per violation. The rule provides a \$500 penalty for  
7 maintenance from the right of way or performing maintenance  
8 without obtaining an amended permit and a \$1,000 penalty for  
9 erecting the sign from the right of way. The Sunset Commission  
10 review for the 2009 legislative session recommended that the  
11 department develop a penalty matrix and the department believes  
12 it will help eliminate some of the contested cases by offering a  
13 set penalty for the violation.

14

15 Amendments to §21.405, Exemptions, provide consistency between  
16 the rural road and primary program rules. The section is  
17 changed to correspond with §21.146. The maximum size of a sign  
18 erected by a non-profit service club, charitable association,  
19 religious organization, chamber of commerce, non-profit museum,  
20 or governmental entity is 50 square feet. The language was also  
21 amended to add an exemption for advertising on school bus  
22 benches to be consistent with §21.416. In addition, the same  
23 language regarding the educational institution exempt sign is  
24 added to allow the same exemption for all school signs.

25

1 In addition to specifying the official address to which all  
2 permit applications and fees must be sent, amendments to  
3 §21.409, Permit Application, require original signatures on the  
4 application document.

5  
6 Amendments to §21.411, Applicant's Identification of Proposed  
7 Site, streamline the site review process and prevent errors in  
8 erecting the OAS structure in the same manner as changes to  
9 §21.160.

10  
11 Amendments to §21.416, Commercial or Industrial Activity,  
12 provide consistency with §21.179 and §21.180. Language that  
13 required a qualifying commercial or industrial activity to post  
14 the hours during which the activity is conducted is removed. In  
15 addition language is added to this section to require the  
16 activity to be within 200 feet of the highway right of way line.  
17 This language is consistent with the requirements under §21.179.

18  
19 New §21.419, Request for a Variance, is added to comply with new  
20 statutory requirements. This section replaces the current Board  
21 of Variance process. Senate Bill 1420 eliminated the Board of  
22 Variance. The new statute allows the executive director or the  
23 executive director's designee the authority to grant a variance  
24 to the requirements of Transportation Code, Chapter 394. The  
25 new section provides that the executive director or the

1 executive director's designee at a level of senior management  
2 may make the variance decision. The section also sets out the  
3 process for requesting the review and how the decision will be  
4 provided. This process is similar to other review processes to  
5 maintain consistency throughout the program.

6  
7 Amendments to §21.420, Permit Expiration, comply with the  
8 statutory requirements of an OAS owner maintaining a license  
9 under Transportation Code, Chapter 394. New language is added  
10 to provide that a permit automatically expires on the date that  
11 the license under which the permit was issued expires or is  
12 revoked. This language is consistent with the language in  
13 §21.176.

14  
15 Amendments to §21.421, Permit Renewals, add language that the  
16 sign structure must be fully erected within one year of the  
17 department's issuance of a permit with respect to dimensions,  
18 lighting, and number of faces. Additional language allows the  
19 department to adjust the permit to reflect the dimensions,  
20 lighting, and number of faces as it exists on the date that is  
21 one year after the issuance of the permit. The language is  
22 added to be consistent with §21.172.

23  
24 Amendments to §21.422, Transfer of Permit, address issues with  
25 the new license requirements. Due to the addition of a license

1 requirement and the new non-profit sign language, the department  
2 needs the ability to transfer sign permits to accommodate the  
3 license requirement. The changes match the language in §21.173  
4 regarding the transfer of permits under the primary program.

5  
6 Amendments to §21.423, Amended Permit, strengthen the overall  
7 OAS permit process by requiring a permit holder to receive the  
8 department's written approval for the amended permit before  
9 proceeding with the change. This change is needed to address  
10 the problem of a permit holder beginning to change a sign in a  
11 manner that may not be approved. The change makes that  
12 requirement clear and puts the sign owner on notice regarding  
13 what is expected. Added language strengthens the permit process  
14 by setting a one year time limit from the date of the  
15 department's approval for the sign owner to complete the  
16 maintenance or alterations to the sign, which parallels the one  
17 year requirement currently in place for permit applications and  
18 is consistent with the one-year completion provision relating to  
19 the issued permits.

20  
21 Amendments to §21.429, Spacing of Signs, address the same issue  
22 as discussed previously in §21.187, regarding the spacing of  
23 signs. The same changes have been made to this section to  
24 maintain consistency.

25

1 New §21.447, Complaint Procedures, is added to comply with new  
2 statutory requirements. The section is the same as §21.203,  
3 which outlines the current compliant process for all outdoor  
4 advertising signs. The section states that the department will  
5 accept and investigate all written complaints, will notify the  
6 sign owner of the pending investigation, and will provide all  
7 parties the results of the investigation. The section provides  
8 timelines and the specific process.

9

10 New §21.448, License Required, is added to comply with statutory  
11 changes requiring a license for the issuance of OAS permits  
12 under the rural road program. To maintain consistency and allow  
13 interchangeability of either license, the language of this new  
14 section matches the license requirements of §21.144.

15

16 New §21.449, License Application, is added to comply with  
17 statutory license requirements. To maintain consistency and  
18 allow interchangeability of either license, the language of this  
19 new section matches the license requirements of §21.152.

20

21 New §21.450, License Issuance, is added to comply with new  
22 statutory license requirements. To maintain consistency and  
23 allow interchangeability of either license, the language of this  
24 new section matches the license requirements of §21.153.

25

1 New §21.451, License Not Transferrable, is added to comply with  
2 new statutory license requirements and provide program  
3 consistency. To maintain consistency and allow  
4 interchangeability of either license, the language of this new  
5 section matches the license requirements of §21.154.

6  
7 New §21.452, License Renewals, is added to comply with new  
8 statutory license requirements. To maintain consistency and  
9 allow interchangeability of either license, the language of this  
10 new section matches the license requirements of §21.155.

11  
12 New §21.453, License Fees, is added to comply with new statutory  
13 license requirements. To maintain consistency and allow  
14 interchangeability of either license, the language of this new  
15 section matches the license requirements of §21.156.

16  
17 New §21.454, Temporary Suspension of License, is added to comply  
18 with new statutory license requirements. To maintain  
19 consistency and allow interchangeability of either license, the  
20 language of this new section matches the license requirements of  
21 §21.157.

22  
23 New §21.455, License Revocation and Non-Renewal, is added to  
24 comply with new statutory license requirements. To maintain  
25 consistency and allow interchangeability of either license, the

1 language of this new section matches the license requirements of  
2 §21.158, as amended.

3

4 New §21.456, Exception to License Requirement for Non-profit  
5 Signs, is added to comply with new statutory license  
6 requirements. To maintain consistency and allow

7 interchangeability of either license, the language of this new  
8 section matches the license requirements of §21.148.

9

10 New §21.457, Non-profit Sign Permit, is added to comply with new  
11 statutory requirements. To maintain consistency and allow  
12 interchangeability of either license, the language of this new  
13 section matches the license requirements of §21.149.

14

15 FISCAL NOTE

16 James Bass, Chief Financial Officer, has determined that for  
17 each of the first five years in which the amendments as proposed  
18 are in effect, there will be no fiscal implications for state or  
19 local governments as a result of enforcing or administering the  
20 amendments.

21

22 The amendments do not create a cost for a municipality that  
23 participates as a certified city. Federal and state laws allow  
24 a municipality to regulate outdoor advertisement within its  
25 jurisdictional boundaries if it meets minimal requirements.

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John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments, repeal, and new sections.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to continue the restructuring of the Outdoor Advertising Regulatory Compliance Program to achieve maximum efficiency and to comply with federal and state law. The proposed amendments, repeal, and new sections implement rule changes in order to comply with statutory changes to Transportation Code, Chapters 391 and 394 due to the enactment of Senate Bill 1420 by the 82nd Legislature. The amendments provide a continuation of the streamlining of the current regulations, and increase consistency between the primary and rural road programs.

There are anticipated economic costs for persons required to comply with the new sections as proposed. There will also be an economic effect on small businesses.

1 The new statutory changes requiring a license and surety bond  
2 for owners of OAS located along rural roads outside the  
3 incorporated boundaries of a municipality do result in an  
4 economic impact to small businesses, but the fee increases will  
5 provide a more efficient, streamlined, and responsive program to  
6 all the citizens of Texas and the outdoor advertising industry.

7

#### 8 TAKINGS IMPACT ASSESSMENT

9 The department has evaluated the proposed amendments, repeal,  
10 and new sections to determine whether Government Code, Chapter  
11 2007 (Private Real Property Rights Preservation Act) requires  
12 the department to complete a takings assessment. The department  
13 has determined that the proposed amendments, repeal, and new  
14 sections do not affect private real property in a manner that  
15 requires the takings assessment. To constitute a taking the  
16 governmental action must cause a reduction of at least 25  
17 percent in the market value of the affected private real  
18 property. The department has determined that any reduction in  
19 property value resulting from the proposed rules would be  
20 significantly less than that amount.

21

#### 22 SMALL BUSINESS IMPACT STATEMENT

23 Under Government Code, §2006.002 a state agency must prepare an  
24 Economic Impact Statement (EIS) to assess the potential impact  
25 of a proposed rule on small businesses and a Regulatory

1 Flexibility Analysis that considers alternative methods of  
2 achieving the purpose of the rule if the proposed rule will have  
3 an adverse economic effect on small businesses.

4

5 To determine if the economic impact would have an adverse  
6 economic effect on small business, the department first had to  
7 determine how many small businesses are regulated under the  
8 program. The department reviewed its program database and  
9 culled duplications and multiple permit holders resulting in a  
10 list of 670 entities holding 1,850 individual permits along  
11 rural roads would be required to apply for a license under  
12 Transportation Code, Chapter 394. Recent surveys indicate 70-  
13 80% of the 670 entities meet the definition of a small business.

14

15 During the drafting of the proposed rules the department  
16 carefully reviewed the proposed changes to determine which, if  
17 any, could potentially result in an economic impact that would  
18 burden a small outdoor advertising company. The department  
19 determined that the requirement of a license and surety bond  
20 would have an economic impact on the regulated community as they  
21 would increase costs of small business operations. However, the  
22 surety bond for OAS located along rural roads outside the  
23 incorporated boundaries of a municipality are unavoidable as it  
24 is required by law enacted by Senate Bill 1420 by the 82nd  
25 Legislature and therefore, not considered in this analysis.

1

2 The revenue from the license fee structure aids in providing the  
3 basis of a revenue-neutral program that will meet the program  
4 goals for streamlining current regulations, providing increased  
5 consistency between the primary and rural road programs, and  
6 improving consistent enforcement. The new license application  
7 fee provides a one-time cost of \$125 and an annual cost of  
8 renewal of \$75, identical to the license fee structure of  
9 Chapter 21, Subchapter I.

10

11 The proposed rules do not increase fees established under the  
12 current rules for replacement permit plates, transfer of  
13 permits, or sign permits for non-profit entities.

14

15 In preparing the proposed rules the department considered  
16 alternative methods of achieving the amount of revenue necessary  
17 to fund the program. With each alternative, the department's  
18 considerations included analyzing whether the alternate option  
19 would minimize the adverse impacts on a small business and yet  
20 allow the department to operate a revenue neutral program.

21

22 The first alternative considered was to base the fee structure  
23 on the total number of permits held by a company. Under this  
24 scenario, three levels were considered. The department would  
25 set the license fee based on whether the company had fewer than

1 100 permits, between 100 and 500 permits, or more than 500  
2 permits. Current data indicates less than 40 percent of the  
3 total number of license holders has fewer than 100 signs and  
4 that number appears to be the best indicator of small sign  
5 companies. In a controlled environment, this alternative would  
6 appear to be the good alternative in terms of minimizing adverse  
7 economic effects to small sign companies. The department would  
8 be able to vary the permit fee based on the size of the  
9 company's billboard business. However, a sign company may hold  
10 multiple licenses under different corporate entities creating  
11 problems with this type of system. Without a determination of  
12 each license holder's corporate structure, it is highly possible  
13 that a number of entities would fall in the lower category of  
14 the range due to the use of different corporate names.

15  
16 The second alternative considered by the department was a  
17 license fee as a direct prorated share. Under this the  
18 department looked at basing the fee on the number of permits the  
19 licensee held as compared to the number of total permits. In an  
20 effort to maintain a revenue-neutral program the department  
21 could potentially determine how much each sign owner owed. This  
22 alternative has the same issues as discussed under the previous  
23 alternative. In addition, the department determined that the  
24 license application and review require the same amount of time  
25 from the department regardless of the number of permits.

1

2 Based on a review of both of these options the department  
3 determined that it did not have adequate information to develop  
4 a fee structure based on the number of sign permits held by a  
5 sign company. The department also concluded, based on its lack  
6 of complete ownership information, that it is not known if this  
7 approach would lessen adverse economic impacts on small sign  
8 companies.

9

10 The third alternative was to use the license fee currently  
11 established for sign owners under the primary program. This  
12 alternative allows the department to maintain the relatively low  
13 initial application and renewal fees for both programs. If the  
14 department established another fee structure under the rural  
15 road program the department would have had to adjust the current  
16 license fee to maintain a revenue neutral program.

17

18 In summary, the department concludes the rules as proposed  
19 accomplish the objectives needed to improve the safety of the  
20 general public and the economic welfare of the state with the  
21 least amount of economic impact on the regulated industries.  
22 The department further concludes that the rules are necessary to  
23 achieve a sound system of management and administration of the  
24 program and are required to comply with statutory changes.

25

1 PUBLIC HEARING

2 Pursuant to the Administrative Procedure Act, Government Code,  
3 Chapter 2001, the Texas Department of Transportation will  
4 conduct a public hearing to receive comments concerning the  
5 proposed rules. The public hearing will be held at 9:00 a.m. on  
6 Tuesday, January 24, 2012, at 200 East Riverside Drive, Building  
7 200, Room 1A-1, Austin, Texas and will be conducted in  
8 accordance with the procedures specified in 43 TAC §1.5. Those  
9 desiring to make comments or presentations may register starting  
10 at 8:30 a.m. Any interested persons may appear and offer  
11 comments, either orally or in writing; however, questioning of  
12 those making presentations will be reserved exclusively to the  
13 presiding officer as may be necessary to ensure a complete  
14 record. While any person with pertinent comments will be  
15 granted an opportunity to present them during the course of the  
16 hearing, the presiding officer reserves the right to restrict  
17 testimony in terms of time and repetitive content.

18 Organizations, associations, or groups are encouraged to present  
19 their commonly held views and identical or similar comments  
20 through a representative member when possible. Comments on the  
21 proposed text should include appropriate citations to sections,  
22 subsections, paragraphs, etc. for proper reference. Any  
23 suggestions or requests for alternative language or other  
24 revisions to the proposed text should be submitted in written  
25 form. Presentations must remain pertinent to the issues being

1 discussed. A person may not assign a portion of his or her time  
2 to another speaker. Persons with disabilities who plan to  
3 attend this meeting and who may need auxiliary aids or services  
4 such as interpreters for persons who are deaf or hearing  
5 impaired, readers, large print or Braille, are requested to  
6 contact the Government and Public Affairs Division, (512) 463-  
7 6086 at least five working days prior to the hearing so that  
8 appropriate services can be provided.

9

#### 10 SUBMITTAL OF COMMENTS

11 Written comments on the proposed amendments to §§21.144, 21.146,  
12 21.149, 21.152, 21.155, 21.158 - 21.160, 21.169, 21.172 -  
13 21.174, 21.179, 21.180, 21.183, 21.187, 21.193, 21.198, and new  
14 21.204 and amendments 21.405, 21.409, 21.411, 21.416, the repeal  
15 of 21.419 and new 21.419, amendments to 21.420 - 21.423, 21.429,  
16 and new 21.447-21.457 may be submitted to John Campbell,  
17 Director, Right of Way Division, Texas Department of  
18 Transportation, 125 East 11th Street, Austin, Texas 78701-2483.  
19 The deadline for receipt of comments is 5:00 p.m. on January 30,  
20 2012.

21

#### 22 STATUTORY AUTHORITY

23 The amendments are proposed under Transportation Code, §201.101,  
24 which provides the commission with the authority to establish  
25 rules for the conduct of the work of the department, and more

1 specifically, Transportation Code, §391.032, which provides  
2 authority to establish rules to regulate the orderly and  
3 effective display of outdoor advertising on primary roads,  
4 Transportation Code, §391.063, which provides authority for the  
5 commission to set fees for the issuance of an outdoor  
6 advertising license; Transportation Code, §391.065, which  
7 provides authority to establish rules to standardize forms and  
8 regulate the issuance of outdoor advertising licenses,  
9 Transportation Code, §394.004, which provides the commission  
10 with the authority to establish rules to regulate the erection  
11 and maintenance of signs on rural roads; and Transportation  
12 Code, §394.025, which provides authority for the commission to  
13 set fees for the issuance of an outdoor advertising license.

14

15 CROSS REFERENCE TO STATUTE

16 Transportation Code, Chapters 391 and 394.

1           SUBCHAPTER I.   REGULATION OF SIGNS ALONG INTERSTATE  
2                            AND PRIMARY HIGHWAYS  
3                            DIVISION 1.   SIGNS

4 §21.144.   License Required.

5           (a) Except as provided by this division, a person may not  
6 obtain a permit for a sign under this division unless the person  
7 holds a currently valid license issued under §21.153 of this  
8 division (relating to License Issuance) or under §21.450 of this  
9 chapter (relating to License Issuance) applicable to the county  
10 in which the sign is to be erected or maintained.

11           (b) A license is valid for one year from the date of  
12 issuance or most recent renewal.

13  
14 §21.146.   Exempt Signs.

15           (a) The following signs are exempt from this division:

16           (1) an on-premise sign that meets the criteria provided  
17 by §21.147 of this division (relating to On-premise Sign) except  
18 as provided by subsection (c) of this section;

19           (2) a sign that has the purpose of protecting life or  
20 property;

21           (3) a sign that provides information about underground  
22 utility lines;

23           (4) an official sign that is erected by a public officer,

1 public agency, or political subdivision under the officer's,  
2 agency's, or political subdivision's constitutional or statutory  
3 authority;

4 (5) a sign required by the Railroad Commission of Texas  
5 at the principal entrance to or on each oil or gas producing  
6 property, well, tank, or measuring facility to identify or to  
7 locate the property if the sign is no larger than necessary to  
8 comply with the Railroad Commission's regulations;

9 (6) a sign of a nonprofit service club, charitable  
10 association, religious organization, chamber of commerce,  
11 nonprofit museum, or governmental entity, other than an entity  
12 to which paragraph (8) of this subsection applies, that gives  
13 information about the meetings, services, events, or locations  
14 of the entity and that does not exceed an area of 50 [~~32~~] square  
15 feet;

16 (7) a public service sign that:

17 (A) is located on a school bus stop seating bench or  
18 shelter;

19 (B) identifies the donor, sponsor, or contributor of  
20 the shelter;

21 (C) contains a public service message that occupies at  
22 least 50 percent of the area of the sign;

23 (D) has no content other than that described by

1 subparagraphs (B) and (C) of this paragraph;

2 (E) is authorized or approved by the law of the entity  
3 that controls the highway involved, including being located at a  
4 place approved by the entity;

5 (F) has a sign face that does not exceed an area of 50  
6 [~~32~~] square feet; and

7 (G) is not facing the same direction as any other sign  
8 on that seating bench or shelter;

9 (8) a sign that is erected and maintained by a public  
10 school, a college or university, or a non-profit agricultural  
11 fair, but only if:

12 (A) any business entity's logo or emblem occupies less  
13 than 25 percent of the total area of the sign face;

14 (B) the sign's overall height does not exceed 42 and  
15 one half feet; and

16 (C) the total area of the sign's face facing a  
17 particular direction of travel does not exceed 200 square feet;

18 (9) [~~+8~~] a sign that shows only the name of a ranch on  
19 which livestock are raised or a farm on which crops are grown,  
20 and the directions to, telephone number, or internet address of  
21 the ranch or farm, and that has a sign face that does not exceed  
22 an area of 50 [~~32~~] square feet;

23 (10) [~~+9~~] a sign that:

1 (A) relates only to a public election;

2 (B) is located on private property;

3 (C) is erected after the 91st day before the date of  
4 the election and is removed before the 11th day after the  
5 election date;

6 (D) has a sign face that does not exceed an area of 50  
7 square feet; and

8 (E) contains no commercial endorsement; and

9 (11) [~~+10~~] a sign identifying the name of a recorded  
10 subdivision located at an entrance to the subdivision or on  
11 property owned by or assigned to the subdivision, home owners  
12 association, or other entity associated with the subdivision.

13 (b) This division does not apply to a sign that was erected  
14 before October 23, 1965 and that the commission, with the  
15 approval of the Secretary of the United States Department of  
16 Transportation, has determined to be a landmark sign of such  
17 historic or artistic significance that preservation would be  
18 consistent with the purposes of the Highway Beautification Act  
19 of 1965, 23 United States Code §131.

20 (c) An on-premise sign cannot be erected earlier than one  
21 year before the date that the business for which the sign is  
22 erected will open and conduct business.

23

1 §21.149. Nonprofit Sign Permit.

2 (a) A nonprofit service club, charitable association,  
3 religious organization, chamber of commerce, nonprofit museum,  
4 or governmental entity may obtain a permit under this section to  
5 erect or maintain a nonprofit sign.

6 (b) To qualify as a nonprofit sign, the sign must:

7 [~~(1) be in a municipality or the extraterritorial~~  
8 ~~jurisdiction of a municipality;~~]

9 (1) [~~(2)~~] advertise or promote only:

10 [~~(A) the municipality;~~]

11 (A) [~~(B)~~] a political subdivision in whose jurisdiction  
12 the sign is [wholly or partially] located or a political  
13 subdivision that is adjacent to such a political subdivision [in  
14 ~~the municipality];~~ or

15 (B) [~~(C)~~] the entity that will hold the permit, but may  
16 only give information about the meetings, services, events, or  
17 location of the entity; and

18 (2) [~~(3)~~] comply with each sign requirement under this  
19 division from which it is not specifically exempted.

20 (c) An application for a permit under this section must be  
21 in a form prescribed by the department and must include, in  
22 detail, the content of the message to be displayed on the sign.

23 (d) After a permit is issued, the permit holder must obtain

1 approval from the department to change the message of the sign.  
2 The department may issue an order of removal of the sign if the  
3 permit holder fails to obtain that approval.

4 (e) If a sign ceases to qualify as a nonprofit sign, the  
5 permit for the sign is subject to cancellation under §21.176 of  
6 this division (relating to Cancellation of Permit).

7 (f) If the holder of a permit issued under this section  
8 loses its nonprofit status or wishes to change the sign so that  
9 it no longer qualifies as a nonprofit sign the permit holder  
10 must:

11 (1) obtain a license under §21.153 of this division  
12 (relating to License Issuance) or §21.450 of this chapter  
13 (relating to License Issuance); and

14 (2) convert the sign permit to a permit for a sign other  
15 than a nonprofit sign and pay the original permit and renewal  
16 fees provided by §21.175 of this division (relating to Permit  
17 Fees).

18  
19 §21.152. License Application.

20 (a) To apply for a license under this division, a person  
21 must file an application in a form prescribed by the department.  
22 The application must include at a minimum:

23 (1) the complete legal name, mailing address, and

1 telephone number of the applicant; and

2 (2) designation of each county in which the applicant's  
3 signs are to be erected or maintained.

4 (b) The application must be signed, notarized, and filed  
5 with the department and be accompanied by:

6 (1) a fully executed outdoor advertiser's surety bond:

7 (A) in the amount of \$2,500 for each county designated  
8 under subsection (a)(2) of this section up to a maximum of  
9 \$10,000;

10 (B) payable to the commission to reimburse the  
11 department for removal costs of a sign that the license holder  
12 unlawfully erects or maintains; and

13 (C) in a form prescribed by the department, executed by  
14 a surety company authorized to transact business in this state;

15 (2) a duly certified power of attorney from the surety  
16 company authorizing the surety company's representative to  
17 execute the bond on the effective date of the bond; and

18 (3) the license fee prescribed by §21.156 of this  
19 division (relating to License Fees).

20 (c) The documentation and the fee required under this  
21 section must be sent to: Texas Department of Transportation,  
22 Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

23

1 §21.155. License Renewals.

2 (a) To continue a license in effect, the license must be  
3 renewed.

4 (b) To renew a license, the license holder must file a  
5 written application in a form prescribed by the department  
6 accompanied by each applicable license fee prescribed by §21.156  
7 of this division (relating to License Fees). The application  
8 must be received by the department before the 46th day after the  
9 date of the license's expiration and must include at a minimum:

10 (1) the complete legal name, mailing address, and  
11 telephone number of the license holder;

12 (2) number of the license being renewed;

13 (3) proof of current surety bond coverage; and

14 (4) the signature of the license holder or person signing  
15 on behalf of the business entity.

16 (c) A license is not eligible for renewal if the license  
17 holder is not authorized to conduct business in this state.

18 (d) The documentation and the fee required under this  
19 section must be sent to: Texas Department of Transportation,  
20 Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

21

22 §21.158. License Revocation.

23 (a) The department will revoke a license and will not issue

1 or renew permits or transfer existing permits under the license  
2 if:

3 (1) the surety bond is not provided within the time  
4 specified by the department under §21.152 of this division  
5 (relating to License Application) or §21.155 of this division  
6 (relating to License Renewals);

7 (2) surety bond coverage is terminated under §21.157 of  
8 this division (relating to Temporary Suspension of License);

9 (3) the number of final enforcement actions of this  
10 subchapter, Subchapter K of this chapter, or Transportation  
11 Code, Chapters [~~Chapter~~] 391 and 394, committed by the license  
12 holder in the aggregate equal or exceed:

13 (A) 10 percent of the number of valid permits held by  
14 the license holder if the license holder holds more than 1,000  
15 sign permits;

16 (B) 20 percent of the number of valid permits held by  
17 the license holder if the license holder holds at least 500 but  
18 fewer than 1,000 sign permits;

19 (C) 25 percent of the number of valid permits held by  
20 the license holder if the license holder holds at least 100 but  
21 fewer than 500 sign permits; or

22 (D) 30 percent of the number of valid permits held by  
23 the license holder if the license holder holds fewer than 100

1 sign permits; or

2 (4) the license holder has not complied with previous  
3 final administrative enforcement actions regarding the license  
4 or any permit held under the license.

5 (b) The department will send notice by certified mail of an  
6 action under this section to the address of record provided by  
7 the license holder.

8 (c) The notice will clearly state:

9 (1) the reasons for the action;

10 (2) the effective date of the action;

11 (3) the right of the license holder to request an  
12 administrative hearing; and

13 (4) the procedure for requesting a hearing including the  
14 period in which the request must be made.

15 (d) A request for an administrative hearing under this  
16 section must be made in writing to the department within 45 days  
17 after the date that the notice is mailed.

18 (e) If timely requested, an administrative hearing will be  
19 conducted in accordance with Chapter 1, Subchapter E of this  
20 title (relating to Procedures in Contested Case).

21

22 §21.159. Permit Application.

23 (a) To obtain a permit for a sign, a person must file an

1 application in a form prescribed by the department. The  
2 application must include, at a minimum:

3 (1) the complete name and address of the applicant;

4 (2) the original signature of the applicant;

5 (3) the proposed location and description of the sign;

6 (4) the complete legal name and address of the owner of  
7 the designated site;

8 (5) a statement of whether the requested sign is located  
9 within an incorporated city or within the city's  
10 extraterritorial jurisdiction;

11 (6) the site owner's or the owner's authorized  
12 representative's original signature on the application  
13 demonstrating:

14 (A) consent to the erection and maintenance of the  
15 sign; and

16 (B) right of entry onto the property of the sign  
17 location by the department or its agents;

18 (7) a document from the city that provides the city's  
19 current zoning map or the portion of that map applicable to the  
20 sign's location; and

21 (8) information that details how and the location from  
22 which the sign will be erected and maintained.

23 (b) If the sign is a nonprofit sign, the application must

1 include verification of the applicant's nonprofit status.

2 (c) If the sign is to be located within the jurisdiction of  
3 a municipality, including the extraterritorial jurisdiction of  
4 the municipality, that is exercising its authority to regulate  
5 outdoor advertising, a certified copy of the permit issued by  
6 the municipality must be submitted with the application unless  
7 documentation is provided to show that the municipality  
8 requires:

9 (1) the issuance of a department permit before the  
10 municipality's; or

11 (2) the erection of the sign within a period of less than  
12 twelve months after the date of the issuance of the municipal  
13 permit.

14 (d) The application must be:

15 (1) notarized;

16 (2) sent to: Texas Department of Transportation, Outdoor  
17 Advertising, P.O. Box 13043, Austin, Texas 78711-3043 [~~filed~~  
18 ~~with the department's division responsible for the outdoor~~  
19 ~~advertising program in Austin~~]; and

20 (3) accompanied by the fee prescribed by §21.175 of this  
21 division (relating to Permit Fees).

22 (e) The application must include a sketch that shows:

23 (1) the location of the poles of the sign structure;

1           (2) the exact location of the sign faces in relation to  
2 the sign structure;

3           (3) the means of access to the sign; and

4           (4) the distance from the buildings, landmarks, right of  
5 way line, other signs, and other distinguishable features of the  
6 landscape.

7

8 §21.160. Applicant's Identification of Proposed Site.

9           (a) An applicant for a permit for a new sign must identify  
10 the proposed site of the sign by setting a stake or marking the  
11 concrete at the proposed location of the edge [~~center pole~~] of  
12 the sign structure, including the sign face, that is nearest to  
13 the right of way [~~or if there is no center pole, at each pole of~~  
14 ~~the sign structure~~].

15           (b) At least two feet of the [a] stake must be visible  
16 above the ground. The stake or the mark [~~and~~] must be  
17 distinguished from any other stake or mark at the location.

18           (c) A stake or mark on the concrete may not be moved or  
19 removed until the application is denied or if approved, until  
20 the sign has been erected.

21

22 §21.169. Notice of Sign Becoming Subject to Regulation.

23           (a) The department will send notice by certified mail to

1 the owner of a sign that becomes subject to Transportation Code,  
2 Chapter 391 because of the construction of a new highway, the  
3 change in designation of an existing highway, or decertification  
4 of a certified city. If the owner of the sign cannot be  
5 identified from the information on file with the department, the  
6 department will give notice by prominently posting the notice on  
7 the sign for a period of 45 consecutive days.

8 (b) If the owner of a sign described by subsection (a) of  
9 this section does not hold a license issued under §21.153 of  
10 this division (relating to License Issuance) or §21.450 of this  
11 chapter (relating to License Issuance), the owner must obtain  
12 the license within 60 days after the day that:

13 (1) the department sends notice under subsection (a) of  
14 this section; or

15 (2) the 45-day posting period under subsection (a) of  
16 this section ends.

17

18 §21.172. Permit Renewals.

19 (a) To be continued in effect, a sign permit must be  
20 renewed.

21 (b) A permit is eligible for renewal if the sign for which  
22 it was issued continues to meet all applicable requirements of  
23 this division and Transportation Code, Chapter 391.

1 (c) To renew the permit, the permit holder must file with  
2 the department a written application in a form prescribed by the  
3 department accompanied by the applicable fees prescribed by  
4 §21.175 of this division (relating to Permit Fees). The  
5 application must be received by the department before the 46th  
6 day after the date of the permit's expiration.

7 (d) A permit may not be renewed if the sign for which it  
8 was issued is not erected to the extent that it includes a sign  
9 face before the first anniversary of the date that the permit  
10 was issued.

11 (e) The department will provide a renewal notification to  
12 the license holder at least 30 days before the date of the  
13 permit expiration and if the permit is not renewed before it  
14 expires the department within 20 days after the date of  
15 expiration will provide notification to the license holder of  
16 the opportunity to file a late renewal.

17 (f) If one year after the date the department issues the  
18 permit the sign structure is not built to the full extent  
19 approved by the permit with respect to dimensions, lighting, or  
20 number of faces, the department will adjust the permit to  
21 reflect the dimensions, lighting, and number of faces of the  
22 sign structure as they exist on that date. The permit will be  
23 eligible for renewal only for the dimensions, lighting, and

1 number of faces as adjusted by the department.

2 (g) The documentation and fee required under this section  
3 must be sent to: Texas Department of Transportation, Outdoor  
4 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

5

6 §21.173. Transfer of Permit.

7 (a) A sign permit may be transferred only with the written  
8 approval of the department.

9 (b) At the time of the transfer, both the transferor and  
10 the transferee must hold a valid license issued under §21.153 of  
11 this division (relating to License Issuance) or §21.450 of this  
12 chapter (relating to License Issuance), except as provided in  
13 subsections (e) - (g) of this section.

14 (c) To transfer one or more sign permits, the permit holder  
15 must send to the department a written request in a form  
16 prescribed by the department accompanied by the prescribed  
17 transfer fee.

18 (d) If the request is approved, the department will send to  
19 the transferor and to the transferee a copy of the approved  
20 permit transfer form.

21 (e) A permit issued to a nonprofit organization under  
22 §21.149 of this division (relating to Nonprofit Sign Permit) may  
23 be transferred to another nonprofit organization that does not

1 hold a license issued under §21.153 of this division or §21.450  
2 of this chapter if the sign will be maintained as a nonprofit  
3 sign.

4 (f) A permit issued to a nonprofit organization under  
5 §21.149 of this division may be converted to a regular permit  
6 and transferred to a person that is not a nonprofit organization  
7 if the transferee holds a license for the county in which the  
8 sign is located at the time of the transfer and the sign meets  
9 all requirements of this division.

10 (g) The department may approve the transfer of one or more  
11 sign permits from a transferor whose license has expired to a  
12 person who holds a license, with or without the signature of the  
13 transferor, if the person provides to the department:

14 (1) legal documents showing the sign has been sold; and

15 (2) documents that indicate that the transferor is dead  
16 or cannot be located.

17 (h) The department will not approve the transfer of a  
18 permit if cancellation of the permit is pending or has been  
19 abated awaiting the outcome of an administrative hearing.

20 (i) The documentation and fee required under this section  
21 must be sent to: Texas Department of Transportation, Outdoor  
22 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

23

1 §21.174. Amended Permit.

2 (a) To perform customary maintenance or to make substantial  
3 changes to the sign or sign structure under §21.191 of this  
4 division (relating to Repair and Maintenance) a permit holder  
5 must obtain [~~submit~~] an amended permit [~~application~~]. To change  
6 the sign face of an existing permitted sign to an electronic  
7 sign under Division 2 of this subchapter (relating to Electronic  
8 Signs) a permit holder must obtain [~~submit~~] an amended permit  
9 [~~application~~].

10 (b) To obtain an amended permit, the permit holder must  
11 submit an [~~The~~] amended permit application [~~must be submitted~~]  
12 on a form prescribed by the department. The amended permit  
13 application [~~and~~] must provide the information required under  
14 §21.159 of this division (relating to Permit Application)  
15 applicable to an amended permit and indicates the change from  
16 the information in the original application for the sign permit.  
17 The amended application is not required to contain the  
18 signatures of the land owner or city representative.

19 (c) The new sign face size, configuration, or location must  
20 meet all applicable requirements of this division and if the  
21 amended permit is to erect an electronic sign, the requirements  
22 of Division 2 of this subchapter.

23 (d) The holder of a permit for a nonconforming sign may

1 apply for an amended permit to perform eligible customary  
2 maintenance under §21.191(b) of this division. An amended  
3 permit will not be issued for a substantial change as described  
4 by §21.191(c) of this division to a nonconforming sign.

5 (e) Making a change to a sign that requires an amended  
6 permit without first obtaining an amended permit is a violation  
7 of this division, except as provided by subsection (g) of this  
8 section and will result in an administrative enforcement action.

9 (f) The department will make a decision on an amended  
10 permit application within 45 days of the date of the receipt of  
11 the amended permit application. If the decision cannot be made  
12 within the 45 day period the department will notify the  
13 applicant of the delay, provide the reason for the delay and  
14 provide an estimate of when the decision will be made.

15 (g) If maintenance or changes authorized under this section  
16 are being made on a conforming sign because of a natural  
17 disaster, the department may waive the requirement that the  
18 required amended permit be issued before the work begins. If  
19 the department grants a waiver under this subsection, the permit  
20 holder shall submit the amended permit application within 60  
21 days after the date that the work is completed. If the  
22 maintenance or changes violate this section or the permit holder  
23 fails to submit the amended permit application as required by

1 this subsection, the sign is subject to enforcement and removal  
2 actions.

3 (h) An amended permit is valid for one year after the date  
4 of the department's approval of the amended permit application.  
5 The provisions of this subchapter relating to a permit,  
6 including §21.172(f) of this division (relating to Permit  
7 Renewals), apply to the amended permit. The date of the  
8 department's approval of the amended permit application is  
9 considered to be the amended permit's date of issuance.

10 (i) The documentation and fee required under this section  
11 must be sent to: Texas Department of Transportation, Outdoor  
12 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

13

14 §21.179. Unzoned Commercial or Industrial Area.

15 (a) An unzoned commercial or industrial area is an area  
16 that:

17 (1) is within 800 feet, measured along the edge of the  
18 highway right of way perpendicular to the centerline of the  
19 main-traveled way, of and on the same side of the highway as the  
20 principal part of at least two adjacent recognized governmental,  
21 commercial, or industrial activities that meet the requirements  
22 of subsection (c) of this section;

23 (2) is not predominantly used for residential purposes;

1 and

2 (3) has not been zoned under authority of law.

3 (b) A part of the regularly used buildings, parking lots,  
4 or storage or processing areas of each of the governmental,  
5 commercial, or industrial activities must be within 200 feet of  
6 the highway right of way and portion of the permanent building  
7 in which the activity is conducted must be visible from the  
8 main-traveled way.

9 (c) For governmental, commercial, or industrial activities  
10 to be considered adjacent for the purposes of subsection (a)(1)  
11 of this section, the regularly used buildings, parking lots,  
12 storage or processing areas of the activities may not be  
13 separated by a vacant lot, an undeveloped area that is more than  
14 50 feet wide, a road, or a street.

15 (d) Two activities that occupy the same building qualify as  
16 adjacent activities for the purposes of subsection (a)(1) of  
17 this section, if:

18 (1) each activity:

19 (A) has at least 400 square feet of floor space  
20 dedicated to that activity; and

21 (B) is an activity that is customarily allowed only in  
22 a zoned commercial or industrial area;

23 (2) the two activities are separated by a dividing wall

1 constructed from floor to ceiling;

2 (3) the two activities have access to the restroom  
3 facilities during all hours the activity is staffed or opened;  
4 and

5 (4) the two activities operate independently of one  
6 another.

7 (e) For the purposes of subsection (d) of this section, two  
8 separate product lines offered by one business are not  
9 considered to be two activities.

10 (f) To determine whether an area is not predominantly used  
11 for residential purposes under subsection (a)(2) of this  
12 section, not more than 50 percent of the area, considered as a  
13 whole, may be used for residential purposes. A road or street  
14 is considered to be used for residential purposes only if  
15 residential property is located on both of its sides. The area  
16 to be considered is the total of actual or projected frontage of  
17 the commercial or industrial activities plus 800 feet on each  
18 side of that frontage, measured along the highway right of way  
19 to a depth of 660 feet. The depth of an unzoned commercial or  
20 industrial area is measured from the nearest edge of the highway  
21 right of way perpendicular to the centerline of the main-  
22 traveled way of the highway.

23 (g) The length of an unzoned commercial or industrial area

1 is measured from the outer edge of the regularly used building,  
2 parking lot, storage, or processing area of the commercial or  
3 industrial activity and along or parallel to the edge of the  
4 pavement of the highway. If the business activity does not  
5 front the highway, a projected frontage is measured from the  
6 outer edge of the regularly used building, parking lot, storage,  
7 or processing area to a point perpendicular to the centerline of  
8 the main-traveled way.

9 (h) A sign is not required to meet the requirements of  
10 subsection (d)(1)(A), (2), or (3) of this section or §21.180 of  
11 this division (relating to Commercial or Industrial Activity) to  
12 maintain conforming status if the permit for the sign was issued  
13 before the effective date of this section.

14

15 §21.180. Commercial or Industrial Activity.

16 (a) For the purposes of this division, a commercial or  
17 industrial activity is an activity that:

18 (1) is customarily allowed only in a zoned commercial or  
19 industrial area; and

20 (2) is conducted in a permanent building or structure  
21 permanently affixed to the real property that:

22 (A) has an indoor restroom, running water, functioning  
23 electrical connections, and permanent flooring, other than dirt,

1 gravel, or sand;

2 (B) is visible from the traffic lanes of the main-  
3 traveled way;

4 (C) is not primarily used as a residence; and

5 (D) has at least 400 square feet of its interior floor  
6 space devoted to the activity.

7 (b) The following are not commercial or industrial  
8 activities:

9 (1) agricultural, forestry, ranching, grazing, farming,  
10 and related activities, including the operation of a temporary  
11 wayside fresh produce stand;

12 (2) an activity that is conducted only seasonally;

13 (3) an activity that has not been conducted at its  
14 present location for at least 180 days;

15 (4) an activity that is not conducted by at least one  
16 person who works for the business at the activity site for at  
17 least 25 hours per week on at least five days per week [~~and for~~  
18 ~~which the hours during which the activity is conducted are~~  
19 ~~posted at the activity site];~~

20 (5) the operation or maintenance of:

21 (A) an outdoor advertising structure;

22 (B) a recreational facility, such as a campground, golf  
23 course, tennis court, wild animal park, or zoo, other than the

1 related activities conducted in a building or structure that  
2 meets the requirements of subsection (a)(2) of this section and  
3 the parking facilities for that building or structure;

4 (C) an apartment house or residential condominium;

5 (D) a public or private preschool, secondary school,  
6 college, or university, other than a trade school or corporate  
7 training campus;

8 (E) a quarry or borrow pit, other than the related  
9 activities conducted in a building or structure that meets the  
10 requirements of subsection (a)(2) of this section and the  
11 parking facilities for that building or structure;

12 (F) a cemetery; or

13 (G) a place that is primarily used for worship;

14 (6) an activity that is conducted on a railroad right of  
15 way; and

16 (7) an activity that is created primarily or exclusively  
17 to qualify an area as an unzoned commercial or industrial area.

18 (c) For the purposes of this section, a building is not  
19 primarily used as a residence if more than 50 percent of the  
20 building's square footage is used solely for the business  
21 activity.

22 (d) A sign is not required to meet the requirements of  
23 subsections (a)(2)(C) (as clarified by subsection (c) of this

1 section), (a)(2)(D), (b)(3), or (b)(4) of this section to  
2 maintain conforming status if the permit for the sign was issued  
3 before the effective date of this section.

4

5 §21.183. Signs Prohibited at Certain Locations.

6 (a) A sign may not be located in a place that creates a  
7 safety hazard, including a location that:

8 (1) causes a driver to be unduly distracted;

9 (2) obscures or interferes with the effectiveness of an  
10 official traffic sign, signal, or device; or

11 (3) obscures or interferes with the driver's view of  
12 approaching, merging, or intersecting traffic.

13 (b) A sign may not be erected or maintained in a location  
14 that violates Health and Safety Code, Chapter 752.

15

16 §21.187. Spacing of Signs.

17 (a) Permitted signs [~~Signs~~] on the same side of a regulated  
18 freeway, including freeway frontage roads, [~~that are outside of~~  
19 ~~incorporated municipal boundaries~~] may not be erected closer  
20 than 1,500 feet apart.

21 (b) For a highway on a non-freeway primary system and  
22 outside the incorporated boundaries of a municipality, permitted  
23 signs on the same side of the highway may not be erected closer

1 than 750 feet apart.

2 (c) For a highway on a non-freeway primary system highway  
3 and within the incorporated boundaries of a municipality,  
4 permitted signs on the same side of the highway may not be  
5 erected closer than 300 feet apart.

6 (d) For the purposes of this section, the space between  
7 signs is measured between points along the right of way of the  
8 highway perpendicular to the center of the signs.

9 (e) For the purposes of this section, a municipality's  
10 extraterritorial jurisdiction is not considered to be included  
11 within the boundaries of the municipality.

12 (f) This section does not apply to directional signs, on-  
13 premise signs, or official signs that are exempted from the  
14 application of Transportation Code, §391.031.

15 (g) The spacing requirements of this section do not apply  
16 to signs separated by buildings, natural surroundings, or other  
17 obstructions in a manner that causes only one of the signs to be  
18 visible within the specified spacing area.

19 (h) A permitted sign may not be erected within five feet of  
20 the highway right of way line. The distance shall be measured  
21 from the end of the sign face nearest the right of way line.

22 (i) A permitted sign that is being displaced by a highway  
23 construction project will not be considered in determining the

1 spacing for a new sign application.

2

3 §21.193. Location of Relocated Sign.

4 (a) To receive a new permit for relocation, an existing  
5 sign must be relocated on a part of the same parcel of land on  
6 which the sign was situated before relocation in a location that  
7 is allowed under this section.

8 (b) If the sign owner can demonstrate that the location  
9 under subsection (a) of this section is not physically or  
10 economically feasible for a sign structure, the sign owner, on  
11 approval by the department, may relocate the sign to any other  
12 location that is allowed under this subsection. The owner is  
13 not entitled to additional relocation benefits under §21.196 of  
14 this division (relating to Relocation Benefits) if the sign  
15 structure is relocated further than 50 miles from the location  
16 of the existing sign.

17 (c) The location of the relocated sign must be within a  
18 zoned commercial or industrial area as described by §21.178 of  
19 this division (relating to Zoned Commercial or Industrial Area)  
20 or an unzoned commercial or industrial area, as described by  
21 §21.179 of this division (relating to Unzoned Commercial or  
22 Industrial Area) except that an unzoned commercial or industrial  
23 area may include only one recognized commercial or industrial

1 activity.

2 (d) A sign may not be relocated to a place where it:

3 (1) can cause a driver to be unduly distracted in any  
4 way;

5 (2) will obscure or otherwise interfere with the  
6 effectiveness of an official traffic sign, signal, or device; or

7 (3) will obstruct or interfere with the driver's view of  
8 approaching, merging, or intersecting motor vehicle or rail  
9 traffic.

10 (e) A sign may not be relocated to a place that is:

11 (1) within 500 feet of a public park that is adjacent to  
12 a regulated highway, with the limitation provided under this  
13 paragraph applying:

14 (A) on either side of a regulated highway that is on a  
15 nonfreeway primary system; or

16 (B) on the side of the highway adjacent to the public  
17 park if the regulated highway is on an interstate or freeway  
18 primary system;

19 (2) if outside of an incorporated municipality along a  
20 regulated highway, adjacent to or within 500 feet of:

21 (A) an interchange, intersection at grade, or rest  
22 area; or

23 (B) a ramp or the ramp's acceleration or deceleration

1 lane;

2 (3) for a highway on the interstate or freeway primary  
3 system, closer than 500 feet to another permitted sign on the  
4 same side of the highway;

5 (4) for a highway on the nonfreeway primary system and  
6 outside of a municipality, closer than 300 feet to another  
7 permitted sign on the same side of the highway;

8 (5) for a highway on the nonfreeway primary system and  
9 within the incorporated boundaries of a municipality, closer  
10 than 100 feet to another permitted sign on the same side of the  
11 highway; or

12 (6) within five feet of any highway right of way line.

13 (f) A sign, at the time of and after its relocation, must  
14 be within 800 feet of at least one recognized governmental,  
15 commercial, or industrial activity [~~about which the sign~~  
16 ~~provides information and~~] that is located on the same side of  
17 the highway.

18 (g) The spacing limitations provided in subsection (e) of  
19 this section do not apply to on-premise signs or directional or  
20 official signs that are exempted from the application of  
21 Transportation Code, §391.031.

22 (h) A sign may not be relocated from a road regulated under  
23 this division to a rural road regulated by Subchapter K of this

1 chapter (relating to Control of Signs along Rural Roads).

2 (i) A relocated sign may not be erected or maintained in a  
3 location that violates Health and Safety Code, Chapter 752.

4

5 §21.198. Order of Removal.

6 (a) If a sign permit expires without renewal or is canceled  
7 or if the sign is erected or maintained in violation of this  
8 division, the owner of the sign, on a written demand by the  
9 department, shall remove the sign at no cost to the state.

10 (b) If the owner does not remove the sign within 45 [~~30~~]  
11 days of the day that the demand is sent, the department will  
12 remove the sign and will charge the sign owner for the cost of  
13 removal, including the cost of any court proceedings.

14 (c) The department will rescind a removal demand if the  
15 department determines the demand was issued incorrectly.

16

17 §21.204. Administrative Penalties.

18 (a) The department may impose administrative penalties  
19 against a person who intentionally violates Transportation Code,  
20 Chapter 391 or this subchapter.

21 (b) The amount of the administrative penalty may not exceed  
22 the maximum amount of a civil penalty that may be imposed under  
23 Transportation Code, §39.035 and will be based on the following:

1           (1) \$150 for a violation of a permit plate requirement  
2 under §21.165 of this division (relating to Sign Permit Plate);

3           (2) \$250 for a violation of:

4           (A) a registration requirement of §21.162 of this  
5 division (relating to Existing Off-Premise Signs); or

6           (B) erecting the sign at the location other than the  
7 location specified on the application, except that if the actual  
8 sign location does not conform to all other requirements the  
9 department will seek cancellation of the permit;

10           (3) \$500 for:

11           (A) maintaining or repairing the sign from the state  
12 right of way; or

13           (B) performing customary maintenance on any sign or  
14 substantial maintenance on a conforming sign without first  
15 obtaining an amended permit; or

16           (4) \$1,000 for erecting a sign from the right of way.

17           (c) In addition to the penalties assessed under subsection  
18 (b) of this section, the department may seek to recover the cost  
19 of repairing any damage to the right of way done by the sign  
20 owner or on the sign owner's behalf.

21           (d) Before initiating an enforcement action under this  
22 section, the department will notify the sign owner in writing of  
23 a violation of subsection (b)(1) or (2)(B) of this section and

1 will give the sign owner 60 days to correct the violation and  
2 provide proof of the correction to the department.

3 (e) Upon determination to seek administrative penalties the  
4 department will mail a notice of the administrative penalties to  
5 the last known address of the permit holder. The notice must  
6 clearly state:

7 (1) the reasons for the administrative penalties;

8 (2) the amount of the administrative penalty; and

9 (3) the right of the holder of the permit to request an  
10 administrative hearing.

11 (f) A request for an administrative hearing under this  
12 section must be made in writing and delivered to the department  
13 within 45 days after the date of the receipt of the notice.

14 (g) If timely requested, an administrative hearing shall be  
15 conducted in accordance with Chapter 1, Subchapter E of this  
16 title (relating to Procedures in Contested Case), and the  
17 imposition of administrative penalties will be abated unless and  
18 until that action is affirmed by order of the commission.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.405. Exemptions.

3 (a) The following are exempt from the requirements of this  
4 subchapter:

5 (1) a sign, the erection and maintenance of which is  
6 allowed under the highway beautification provisions of the  
7 Transportation Code, Chapter 391;

8 (2) a sign in existence before September 1, 1985, that  
9 was properly registered and maintains a valid registration under  
10 §21.407 of this subchapter (relating to Existing Off-Premise  
11 Signs);

12 (3) a sign that has as its purpose the protection of life  
13 and property;

14 (4) a directional or other official sign authorized by  
15 law, including a sign pertaining to a natural wonder or scenic  
16 or historic attraction;

17 (5) a sign or marker giving information about the  
18 location of an underground electric transmission line, telegraph  
19 or telephone property or facility, pipeline, public sewer, or  
20 waterline;

21 (6) a sign erected by a governmental entity;

22 (7) a sign erected solely for and relating to a public  
23 election, but only if:

1 (A) the sign is on private property;

2 (B) the sign is erected after the 91st day before the  
3 election and is removed before the 11th day after the election;

4 (C) the sign is constructed of lightweight material;

5 (D) the surface area of the sign is not larger than 50  
6 square feet; and

7 (E) the sign is not visible from the main-traveled way  
8 of an interstate or federal-aid primary highway;

9 (8) an off-premise directional sign for a small business,  
10 as defined by Government Code, §2006.001, that is on private  
11 property and is no larger than 50 square feet;

12 (9) a sign that is required by the Railroad Commission of  
13 Texas at the principal entrance to or on each oil or gas  
14 producing property, well, tank, or measuring facility to  
15 identify or to locate the property, that is no larger in size  
16 than is necessary to comply with the Railroad Commission's  
17 regulations, and that has no advertising or information content  
18 other than the name or logo of the company and the necessary  
19 directions;

20 (10) a sign that shows only the name of a ranch on which  
21 livestock are raised or a farm on which crops are grown and the  
22 directions to, telephone number, or internet address of the  
23 ranch or farm and that has a sign face that does not exceed an

1 area of 32 square feet; ~~and~~

2 (11) a sign identifying the name of a recorded  
3 subdivision located at an entrance to the subdivision or on  
4 property owned by or assigned to the subdivision, home owners  
5 association, or other entity associated with the subdivision;

6 (12) a sign of a nonprofit service club, charitable  
7 association, religious organization, chamber of commerce, or  
8 nonprofit museum that gives information about the meetings,  
9 services, events, or locations of the entity and that does not  
10 exceed an area of 50 square feet;

11 (13) a public service sign that:

12 (A) is located on a school bus stop seating bench or  
13 shelter;

14 (B) identifies the donor, sponsor, or contributor of  
15 the shelter;

16 (C) contains a public service message that occupies at  
17 least 50 percent of the area of the sign;

18 (D) has no content other than that described by  
19 subparagraphs (B) and (C) of this paragraph;

20 (E) is authorized or approved by the law of the entity  
21 that controls the highway involved, including being located at a  
22 place approved by the entity;

23 (F) has a sign face that does not exceed an area of 50

1 square feet; and

2 (G) is not facing the same direction as any other sign

3 on that seating bench or shelter; and

4 (14) a sign that is erected and maintained by a public

5 school, or a college or university, or a non-profit agricultural

6 fair, but only if:

7 (A) any business entity's logo or emblem occupies less

8 than 25 percent of the total area of the sign face;

9 (B) the sign's overall height does not exceed 42 and

10 one half feet; and

11 (C) the total area of the sign's face facing a

12 particular direction of travel does not exceed 200 square feet.

13 (b) An on-premise sign cannot be erected earlier than one

14 year before the date that the business for which the sign is

15 erected will open and conduct business.

16

17 §21.409. Permit Application.

18 (a) To obtain a permit for a sign, a person must file an

19 application in a form prescribed by the department. The

20 application at a minimum must include:

21 (1) the complete name and address of the applicant;

22 (2) the original signature of the applicant;

23 (3) the proposed location and description of the sign;

1 (4) the complete legal name and address of the owner of  
2 the designated site;

3 (5) a statement of whether the requested sign is located  
4 within an incorporated city or a city's extraterritorial  
5 jurisdiction;

6 (6) the site owner's or the owner's authorized  
7 representative's original signature on the application  
8 demonstrating consent to the erection and maintenance of the  
9 sign and right of entry onto the property of the sign location  
10 by the department or its agents;

11 (7) information that details how and the location from  
12 which the sign will be erected and maintained; and

13 (8) additional information the department considers  
14 necessary to determine eligibility.

15 (b) The application must be:

16 (1) notarized;

17 (2) sent to: Texas Department of Transportation, Outdoor  
18 Advertising, P.O. Box 13043, Austin, Texas 78711-3043 [~~filed~~  
19 ~~with the department's division responsible for the Outdoor~~  
20 ~~Advertising Program in Austin~~]; and

21 (3) accompanied by the fee prescribed by §21.424 of this  
22 subchapter (relating to Permit Fees).

23 (c) The application must include a sketch that shows:

- 1 (1) the location of the poles of the sign structure;  
2 (2) the exact location of the sign faces in relation to  
3 the sign structure;  
4 (3) the means of access to the sign; and  
5 (4) the distance from the buildings, landmarks, right of  
6 way line, other signs, and other distinguishable features of the  
7 landscape.

8

9 §21.411. Applicant's Identification of Proposed Site.

10 (a) An applicant for a permit for a new sign must identify  
11 the proposed site of the sign by setting a stake or marking the  
12 concrete at the proposed location of the edge of the sign  
13 structure, including the sign face, that is nearest the right of  
14 way [~~center pole of the sign structure or if there is no center~~  
15 ~~pole, at each pole of the sign structure~~].

16 (b) At least two feet of the [α] stake must be visible  
17 above the ground. The stake or the mark must be distinguished  
18 from any other stake or mark at the location.

19 (c) A stake or marking may not be moved or removed until  
20 the application is denied or, if approved, until the sign has  
21 been erected.

22

23 §21.416. Commercial or Industrial Activity.

1 (a) For the purposes of this subchapter, a commercial or  
2 industrial activity is an activity that:

3 (1) is customarily allowed only in a zoned commercial or  
4 industrial area; and

5 (2) is conducted in a permanent building or structure  
6 affixed to the real property that:

7 (A) has an indoor restroom, running water, functioning  
8 electrical connections, and permanent flooring, other than dirt,  
9 gravel, or sand;

10 (B) is visible from the traffic lanes of the main-  
11 traveled way;

12 (C) is not primarily used as a residence; [~~and~~]

13 (D) has at least 400 square feet of its interior floor  
14 space devoted to the activity; and

15 (E) is within 200 feet of the highway right of way.

16 (b) The following are not commercial or industrial  
17 activities:

18 (1) agricultural, forestry, ranching, grazing, farming,  
19 and related activities, including the operation of a temporary  
20 wayside fresh produce stand;

21 (2) an activity that is conducted only seasonally;

22 (3) an activity that has not been conducted at its  
23 present location for at least 180 days;

1           (4) an activity that is not conducted by at least one  
2 person who works for the business at the activity site for at  
3 least 25 hours per week on at least five days per week [~~and for~~  
4 ~~which the hours during which the activity is conducted are~~  
5 ~~posted at the activity site~~];

6           (5) the operation or maintenance of:

7           (A) an outdoor advertising structure;

8           (B) a recreational facility, such as a campground, golf  
9 course, tennis court, wild animal park, or zoo, other than the  
10 related activities conducted in a building or structure that  
11 meets the requirements of subsection (a)(2) of this section and  
12 the parking facilities for that building or structure;

13           (C) an apartment house or residential condominium;

14           (D) a public or private preschool, secondary school,  
15 college, or university, other than a trade school or corporate  
16 training campus;

17           (E) a quarry or borrow pit, other than the related  
18 activities conducted in a building or structure that meets the  
19 requirements of subsection (a)(2) of this section and the  
20 parking facilities for that building or structure;

21           (F) a cemetery; or

22           (G) a place that is primarily used for worship;

23           (6) an activity that is conducted on a railroad right of

1 way; and

2 (7) an activity that is created primarily or exclusively  
3 to qualify an area as an unzoned commercial or industrial area.

4 (c) For the purposes of this section, a building is not  
5 primarily used as a residence if more than 50 percent of the  
6 building's square footage is used solely for the business  
7 activity.

8 (d) A sign is not required to meet the requirements of  
9 subsections (a)(2)(C) (as clarified by subsection (c) of this  
10 section), (a)(2)(D), (b)(3), or (b)(4) of this section to  
11 maintain conforming status if the permit for the sign was issued  
12 before the effective date of this section.

13

14 §21.419. Request for a Variance [~~Board of Variancee~~].

15 (a) An applicant may request that the executive director  
16 approve a variance from the requirements of this subchapter if  
17 the applicant believes that a minor exception to this subchapter  
18 is required to prevent a substantial injustice. [A board of  
19 ~~variance is established. The executive director shall appoint~~  
20 ~~the members of the board. A majority of the members constitutes~~  
21 ~~a quorum.]~~

22 (b) The executive director or the executive director's  
23 designee, who must be a person who holds a senior leadership

1 position of the department and reports directly to the executive  
2 director, will consider all relevant written evidence submitted  
3 by the applicant and collected by the department relating to the  
4 request. [~~The board of variance may make minor exceptions to~~  
5 ~~this subchapter if the board determines that a substantial~~  
6 ~~injustice would result unless the minor exceptions were granted.~~  
7 ~~The board of variance may establish appropriate conditions and~~  
8 ~~safeguards for granting the variance.~~]

9 (c) The executive director or the designee will make a  
10 final determination on the request for a variance within 60 days  
11 of the receipt of the request. [~~The board of variance will meet~~  
12 ~~and consider variance requests as needed.~~]

13 (d) If the executive director or the designee is unable to  
14 make a final determination on the request within the 60-day  
15 period, the department will notify the applicant by mail of the  
16 delay and provide an estimated time in which a final  
17 determination will be made. [~~The board of variance will provide~~  
18 ~~10 days notice of the meeting to all applicants requesting a~~  
19 ~~variance.~~]

20 (e) If the variance is granted and the other applicable  
21 requirements are satisfied, the department will issue the  
22 permit. [~~An applicant may request a variance from the board of~~  
23 ~~variance if the applicant believes that the applicant meets the~~

1 ~~requirements of subsection (b) of this section.]~~

2 (f) A denial of a variance is final and is not appealable.

3 ~~[The board of variance will consider evidence from all parties~~  
4 ~~present at the meeting prior to making a determination on the~~  
5 ~~requested variance.]~~

6

7 §21.420. Permit Expiration.

8 (a) A permit is valid for one year.

9 (b) A permit automatically expires on the date that the  
10 license issued under which the permit was issued expires or is  
11 revoked by the department under §21.158 of this chapter  
12 (relating to License Revocation) or §21.455 of this subchapter  
13 (relating to License Revocation).

14

15 §21.421. Permit Renewals.

16 (a) To continue in effect, a permit must be renewed.

17 (b) A permit is eligible for renewal if the sign for which  
18 it was issued continues to meet all applicable requirements of  
19 this subchapter and Transportation Code, Chapter 394.

20 (c) To renew the permit, the permit holder must file with  
21 the department a written application in a form prescribed by the  
22 department accompanied by the applicable fees prescribed by  
23 §21.424 of this subchapter (relating to Permit Fees). The

1 application must be received by the department before the 46th  
2 day after the date of the permit expiration.

3 (d) A permit may not be renewed if the sign for which it  
4 was issued is not erected to the extent that it includes a sign  
5 face before the first anniversary of the date the permit was  
6 issued.

7 (e) The department will provide a renewal notification to  
8 the licensee at least 30 days before the date of the permit  
9 expiration and if the permit is not renewed before it expires  
10 the department within 20 days after the date of expiration will  
11 provide notification to the licensee of the opportunity to file  
12 a late renewal.

13 (f) If one year after the date the department issues the  
14 permit, the sign structure is not built to the full extent  
15 approved by the permit with respect to dimensions, lighting, or  
16 number of faces, the department will adjust the permit to  
17 reflect the dimensions, lighting, and number of faces of the  
18 sign structure as they exist on that date. The permit will be  
19 eligible for renewal only for the dimensions, lighting, and  
20 number of faces as adjusted by the department.

21 (g) The documentation and the fee required under this  
22 section must be sent to: Texas Department of Transportation,  
23 Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

1

2 §21.422. Transfer of Permit.

3 (a) A sign permit may be transferred only with the written  
4 approval of the department.

5 (b) To transfer one or more sign permits, the permit holder  
6 must send to the department a written request in a form  
7 prescribed by the department accompanied by the prescribed  
8 transfer fee prescribed by §21.424 of this subchapter (relating  
9 to Permit Fees).

10 (c) At the time of the transfer, both the transferor and  
11 the transferee must hold a valid license issued under §21.153 of  
12 this chapter (relating to License Issuance) or §21.450 of this  
13 subchapter (relating to License Issuance), except as provided by  
14 subsections (f) - (h) of this section.

15 (d) The documentation and fee required under this section  
16 must be sent to: Texas Department of Transportation, Outdoor  
17 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

18 (e) [~~e~~] If the request is approved, the department will  
19 send to the transferor and to the transferee a copy of the  
20 approved permit transfer form.

21 (f) A permit issued to a nonprofit organization under  
22 §21.457 of this subchapter (relating to Nonprofit Sign Permit)  
23 may be transferred to another nonprofit organization that does

1 not hold a license issued under §21.153 of this chapter or  
2 §21.450 of this subchapter, if the sign will be maintained as a  
3 nonprofit sign.

4 (g) A permit issued to a nonprofit organization under  
5 §21.457 of this subchapter may be converted to a regular permit  
6 and transferred to a person that is not a nonprofit organization  
7 if the transferee holds a license for the county in which the  
8 sign is located at the time of the transfer and the sign meets  
9 all of the requirements of this subchapter.

10 (h) The department may approve the transfer of one or more  
11 sign permits from a transferor whose license has expired to a  
12 person who holds a license, with or without the signature of the  
13 transferor, if the person provides to the department:

14 (1) legal documents showing the sign has been sold; and

15 (2) documents that indicate that the transferor is dead  
16 or cannot be located.

17 (i) [~~d~~] The department will not approve the transfer of a  
18 permit if cancellation of the permit is pending or has been  
19 abated awaiting the outcome of an administrative hearing.

20

21 §21.423. Amended Permit.

22 (a) To perform customary maintenance or to make substantial  
23 changes to the sign or sign structure under §21.434 of this

1 subchapter (relating to Repair and Maintenance), a permit holder  
2 must obtain [~~submit~~] an amended permit [~~application~~].

3 (b) To obtain an amended permit the permit holder must  
4 submit an [~~The~~] amended permit application [~~must be submitted~~]  
5 on a form prescribed by the department that provides the  
6 information required under §21.409 of this subchapter (relating  
7 to Permit Application) that is applicable to an amended permit  
8 and indicates the change from the information in the original  
9 application for the sign permit. The amended permit will not  
10 require the signature of the land owner or city representative.

11 (c) The new sign face size, configuration, or location must  
12 meet all applicable requirements of this subchapter.

13 (d) The holder of a permit for a nonconforming sign may  
14 apply for an amended permit to perform eligible customary  
15 maintenance under §21.434 of this subchapter. An amended permit  
16 will not be issued for a substantial change, as described by  
17 §21.434(c) of this subchapter, to a nonconforming sign.

18 (e) Making a change to a sign that requires an amended  
19 permit without first obtaining an amended permit is a violation  
20 of this subchapter and will result in an administrative  
21 enforcement action.

22 (f) The department will make a decision on an amended  
23 permit application within 45 days of the date receipt of the

1 amended permit application. If the decision cannot be made  
2 within the 45 day period the department will notify the  
3 applicant of the delay, provide the reason for the delay, and  
4 provide an estimate for when the decision will be made.

5 (g) In the event of a natural disaster the department may  
6 waive the requirement that a required amended permit be issued  
7 prior to the repair of a conforming sign. If the department  
8 waives this requirement the amended permit must be submitted  
9 within 60 days of the completion of the repairs. If the repairs  
10 are in violation of these rules or the permit holder fails to  
11 submit the amended permit application the sign is subject to  
12 enforcement and removal actions.

13 (h) An amended permit is valid for one year after the date  
14 of the department's approval of the amended permit application.  
15 The provisions of this subchapter relating to a permit,  
16 including §21.421(f) of this subchapter (relating to Permit  
17 Renewals), apply to the amended permit. The date of the  
18 department's approval of the amended permit application is  
19 considered to be the amended permit's date of issuance.

20 (i) The documentation and fee required under this section  
21 must be sent to: Texas Department of Transportation, Outdoor  
22 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

23

1 §21.429. Spacing of Signs.

2 (a) A permitted [~~An~~] off-premise sign having a sign face  
3 area of at least 301 square feet may not be located within 1,500  
4 feet of another permitted off-premise sign on the same side of  
5 the roadway.

6 (b) A permitted [~~An~~] off-premise sign having a sign face  
7 area of at least 100 but less than 301 square feet may not be  
8 located within 500 feet of another permitted off-premise sign  
9 having a sign face within that range or within 1500 feet of a  
10 permitted [~~an~~] off-premise sign that has a sign face of at least  
11 301 square feet and is on the same side of the roadway.

12 (c) A permitted [~~An~~] off-premise sign having a face area of  
13 less than 100 square feet may not be located within 150 feet of  
14 another permitted off-premise sign having a sign face of less  
15 than 100 square feet, within 500 feet of a permitted sign with a  
16 face area of at least 100 but less than 301 square feet, or  
17 within 1,500 feet of a permitted [~~an~~] off-premise sign with a  
18 face area of at least 301 square feet that is on the same side  
19 of the roadway.

20 (d) Two signs located at the same intersection do not  
21 violate this section if they:

22 (1) are located so that their messages are not directed  
23 toward traffic flowing in the same direction; and

1           (2) are not visible from the main-traveled way of an  
2 interstate or federal-aid primary highway.

3           (e) For the purposes of this section, the space between  
4 signs is measured between points along the right of way of the  
5 roadway perpendicular to the center of the signs.

6           (f) The spacing requirements of this section do not apply  
7 to signs separated by buildings, natural surroundings, or other  
8 obstructions in a manner that causes only one of the signs to be  
9 visible within the specified spacing area.

10          (g) An off-premise sign may not be erected within five feet  
11 of a rural road right-of-way line. This distance will be  
12 measured from the edge of the sign face nearest to the right of  
13 way line.

14          (h) An off-premise sign must be erected within 800 feet of  
15 at least one recognized commercial or industrial activity. The  
16 commercial or industrial activity must be on the same side of  
17 the rural road as the sign.

18          (i) Distance from the commercial or industrial activity is  
19 measured from the outer edges of the regularly used buildings,  
20 parking lots, storage facilities, or processing areas of the  
21 commercial or industrial activity. Measurements are not made  
22 from the property line unless the property lines coincide with  
23 the regularly used portions of the activity.

1 (j) A sign may not be located in a place that creates a  
2 safety hazard, including a location that:

3 (1) is likely to cause a driver to be unduly distracted;

4 (2) obscures or interferes with the effectiveness of an  
5 official traffic sign, signal, or device; or

6 (3) obstructs or interferes with the driver's view of  
7 approaching, merging, or intersecting roadway or rail traffic.

8 (k) A sign may not be located in an area that is adjacent  
9 to or within 1,000 feet of a rest area.

10 (l) The distance from a rest area is measured along the  
11 right of way line from the outer edges of the rest area boundary  
12 abutting the right of way.

13 (m) The center of a sign may not be located within 250 feet  
14 of the nearest point of the boundary of a public park.

15 (n) This subsection applies only if a public park boundary  
16 abuts the right of way of a regulated highway. A sign may not  
17 be located within 1,500 feet of the boundary of the public park,  
18 as measured along the right of way line from the nearest common  
19 point of the park's boundary and the right of way. This  
20 limitation applies on both sides of the rural road.

21 (o) A permitted sign that is being displaced by a highway  
22 construction project will not be considered in determining the  
23 spacing for a new sign application.

1

2 §21.447. Complaint Procedures.

3 (a) The department will accept and investigate all written  
4 complaints on a specific sign structure, sign company, or any  
5 other issue under the jurisdiction of the outdoor advertising  
6 program.

7 (b) The complaints can be filed via the department's  
8 website, [www.txdot.gov](http://www.txdot.gov), or by mail to Texas Department of  
9 Transportation, Outdoor Advertising, P.O. Box 13043, Austin,  
10 Texas 78711-3043.

11 (c) If the complaint involves a sign structure or a sign  
12 company the department will notify the owner of the sign  
13 structure or sign company of the complaint and the pending  
14 investigation within 15 days of receipt of the complaint. This  
15 notification will include a copy of the complaint and complaint  
16 investigation procedures.

17 (d) If the complaint included contact information, the  
18 department will provide the complainant with a copy of the  
19 complaint procedures within 15 days of the receipt of the  
20 complaint.

21 (e) If the complaint involves fewer than 10 sign structures  
22 the department will investigate the complaint and make a finding  
23 within 30 days of the receipt of the complaint. If the

1 complaint involves 10 or more sign structures or is an  
2 investigation of a sign company or other outdoor advertising  
3 matter the department will make a finding within 90 days of the  
4 receipt of the complaint.

5 (f) If the department is unable to meet the deadlines in  
6 subsection (e) of this section, the department will notify the  
7 complainant, the sign owner, or sign company of the delay and  
8 will provide a date for the completion of the investigation.

9 (g) The department will provide the complainant, sign  
10 owner, or sign company the findings of the investigation, which  
11 will include whether administrative enforcement actions are  
12 being initiated.

13

14 §21.448. License Required.

15 (a) Except as provided by this subchapter, a person may not  
16 obtain a permit for a sign under this subchapter unless the  
17 person holds a currently valid license issued under §21.153 of  
18 this chapter (relating to License Issuance), or under §21.450 of  
19 this subchapter (relating to License Issuance), applicable to  
20 the county in which the sign is to be erected or maintained.

21 (b) A license is valid for one year after its date of  
22 issuance or most recent renewal.

23

1 §21.449 License Application.

2 (a) To apply for a license under this subchapter, a person  
3 must file an application in a form prescribed by the department.

4 The application must include at a minimum:

5 (1) the complete legal name, mailing address, and  
6 telephone number of the applicant; and

7 (2) designation of each county in which the applicant's  
8 signs are to be erected or maintained.

9 (b) The application must be signed, notarized, and filed  
10 with the department and be accompanied by:

11 (1) a fully executed outdoor advertiser's surety bond:

12 (A) in the amount of \$2,500 for each county designated  
13 under subsection (a)(2) of this section up to a maximum of  
14 \$10,000;

15 (B) payable to the commission to reimburse the  
16 department for removal costs of a sign that the license holder  
17 unlawfully erects or maintains; and

18 (C) in a form prescribed by the department, executed by  
19 a surety company authorized to transact business in this state;

20 (2) a duly certified power of attorney from the surety  
21 company authorizing the surety company's representative to  
22 execute the bond on the effective date of the bond; and

23 (3) the license fee prescribed by §21.453 of this

1 subchapter (relating to License Fees).

2 (c) The documentation and fee required under this section  
3 must be sent by certified or regular mail to: Texas Department  
4 of Transportation, Outdoor Advertising, P.O. Box 13043, Austin,  
5 Texas 78711-3043.

6

7 §21.450. License Issuance.

8 (a) The department will issue a license if the requirements  
9 of §21.152 of this chapter (relating to License Application), or  
10 if the requirements of §21.449 of this subchapter (relating to  
11 License Application), are satisfied.

12 (b) The department will not issue a license to an entity  
13 that is not authorized to conduct business in this state.

14

15 §21.451. License Not Transferable. A license issued under this  
16 subchapter is not transferable.

17

18 §21.452. License Renewals.

19 (a) To continue a license in effect, the license must be  
20 renewed.

21 (b) To renew a license, the license holder must file a  
22 written application in a form prescribed by the department  
23 accompanied by each applicable license fee prescribed by the

1 subchapter under which the license was issued. The application  
2 must be received by the department before the 46th day after the  
3 date of the license's expiration and must include at a minimum:

4 (1) the complete legal name, mailing address, and  
5 telephone number of the license holder;

6 (2) the number of the license being renewed;

7 (3) proof of current surety bond coverage; and

8 (4) the signature of the license holder or person signing  
9 on behalf of the business entity.

10 (c) A license is not eligible for renewal if the license  
11 holder is not authorized to conduct business in this state.

12 (d) A license is not eligible for renewal unless the  
13 license holder has complied with the permit requirements of this  
14 subchapter, Subchapter I of this chapter (relating to Regulation  
15 of Signs Along Interstate and Primary Highways), or  
16 Transportation Code, Chapters 391 and 394.

17  
18 §21.453. License Fees.

19 (a) The amount of the fee for the issuance of a license  
20 under this subchapter is \$125.

21 (b) The amount of the annual renewal fee is \$75.

22 (c) In addition to the \$75 annual renewal fee, an  
23 additional late fee of \$100 is required for a renewal license

1 application that is received before the 45th day after the  
2 expiration date of the license.

3 (d) A license fee is payable by check, cashier's check, or  
4 money order made payable to the state highway fund, and must be  
5 submitted with the application. If the check or money order is  
6 dishonored upon presentment, the license is voidable.

7 (e) The department will provide a renewal notification to  
8 the license holder at least 45 days before the date of the  
9 license expiration and if the license is not renewed before it  
10 expires, the department within 20 days after the date of  
11 expiration will provide notification to the license holder of  
12 the opportunity to file a late renewal application.

13  
14 §21.454. Temporary Suspension of License. If the department is  
15 notified by a surety company that a bond is being canceled, the  
16 department will notify the license holder by certified mail that  
17 a new bond must be obtained and filed with the department before  
18 the bond cancellation date or the 30th day after the day of the  
19 receipt of the notice, whichever is later.

20  
21 §21.455. License Revocation and Non-Renewal.

22 (a) The department will initiate an enforcement proceeding,  
23 as described in this section, to revoke a license holder's

1 license if:

2 (1) the license holder does not provide the department  
3 with the required surety bond within the time specified in  
4 §21.449 of this subchapter (relating to License Application) or  
5 §21.452 of this subchapter (relating to License Renewals);

6 (2) the license holder's surety bond coverage is  
7 terminated under §21.454 of this subchapter (relating to  
8 Temporary Suspension of License);

9 (3) the number of final enforcement actions of this  
10 subchapter, Subchapter I of this chapter (relating to Regulation  
11 of Signs Along Interstate and Primary Highways), or  
12 Transportation Code, Chapters 391 and 394, committed by the  
13 license holder in the aggregate equal or exceed:

14 (A) 10 percent of the number of valid permits held by  
15 the license holder, if the license holder holds more than 1,000  
16 sign permits;

17 (B) 20 percent of the number of valid permits held by  
18 the license holder, if the license holder holds at least 500 but  
19 fewer than 1,000 sign permits;

20 (C) 25 percent of the number of valid permits held by  
21 the license holder if the license holder holds at least 100 but  
22 fewer than 500 sign permits; or

23 (D) 30 percent of the number of valid permits held by

1 the license holder if the license holder holds fewer than 100  
2 sign permits; or

3 (4) the license holder has not complied with any  
4 administrative orders or agreements arising out of and relating  
5 to previous enforcement actions initiated against the license  
6 holder under this section.

7 (b) The department will send notice by certified mail of an  
8 action under this section to the address of record provided by  
9 the license holder.

10 (c) The notice will clearly state:

11 (1) the reasons for the action;

12 (2) the effective date of the action;

13 (3) the right of the license holder to request an  
14 administrative hearing; and

15 (4) the procedure for requesting a hearing including the  
16 period in which the request must be made.

17 (d) A request for an administrative hearing under this  
18 section must be made in writing to the department within 45 days  
19 after the date that the notice is mailed.

20 (e) If timely requested, an administrative hearing will be  
21 conducted in accordance with Chapter 1, Subchapter E of this  
22 title (relating to Procedures in Contested Case).

23

1 §21.456. Exception to License Requirement for Nonprofit Signs.

2 A nonprofit organization may erect or maintain a nonprofit sign

3 without obtaining an outdoor advertising license, but the

4 organization must obtain a permit under either §21.457 of this

5 subchapter (relating to Nonprofit Sign Permit) before it may

6 erect or maintain such a sign.

7

8 §21.457. Nonprofit Sign Permit.

9 (a) A nonprofit service club, charitable association,

10 religious organization, chamber of commerce, nonprofit museum,

11 or governmental entity may obtain a permit under this section to

12 erect or maintain a nonprofit sign.

13 (b) To qualify as a nonprofit sign, the sign must:

14 (1) advertise or promote:

15 (A) a political subdivision in whose jurisdiction the

16 sign is located or a political subdivision that is adjacent to

17 such a political subdivision; or

18 (B) the entity that will hold the permit, but may only

19 give information about the meetings, services, events, or

20 location of the entity; and

21 (2) comply with each sign requirement under this

22 subchapter from which it is not expressly exempted.

23 (c) An application for a permit under this section must be

1 in a form prescribed by the department and must include, in  
2 detail, the content of the message to be displayed on the sign.

3 (d) After a permit is issued, the permit holder must obtain  
4 approval from the department to change the message of the sign.  
5 The department may issue an order of removal of the sign if the  
6 permit holder fails to obtain that approval.

7 (e) If a sign ceases to qualify as a nonprofit sign, the  
8 permit for the sign is subject to cancellation under §21.425 of  
9 this subchapter (relating to Cancellation of Permit).

10 (f) If the holder of a permit issued under this section  
11 loses its nonprofit status or wishes to change the sign so that  
12 it no longer qualifies as a nonprofit sign the permit holder  
13 must:

14 (1) obtain a license under §21.153 of this chapter  
15 (relating to License Issuance) or §21.450 of this subchapter  
16 (relating to License Issuance); and

17 (2) convert the sign permit to a permit for a sign other  
18 than a nonprofit sign and pay the original permit and renewal  
19 fees provided by §21.424 of this subchapter (relating to Permit  
20 Fees).