

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.142, §21.149, §21.150, §21.151, §21.155, §21.160, §21.411, §21.431, §21.441, §21.521, §21.531, §21.541, §21.561, and §21.572 relating to regulation of signs along interstate and primary highways and rural roads to be codified under Title 43, Texas Administrative Code, Part 1.

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

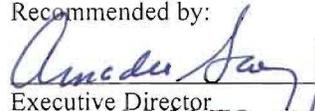
IT IS THEREFORE ORDERED by the commission that the amendments to §21.142, §21.149, §21.150, §21.151, §21.155, §21.160, §21.411, §21.431, §21.441, §21.521, §21.531, §21.541, §21.561, and §21.572 are adopted and are authorized for filing with the Office of the Secretary of State.

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

Submitted and reviewed by:


Director, Right of Way Division

Recommended by:


Executive Director

111670 JAN 29 09

Minute Number Date Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §§21.142, 21.149, 21.150, 21.151, 21.155, 21.160,
4 21.411, 21.431, 21.441, 21.521, 21.531, 21.541, 21.561, and
5 21.572, concerning regulation of signs along interstate and
6 primary highways and rural roads. The amendments to §§21.142,
7 21.149, 21.150, 21.151, 21.155, 21.160, 21.411, 21.431, 21.441,
8 21.521, 21.531, 21.541, 21.561, and 21.572 are adopted without
9 changes to the proposed text as published in the December 5,
10 2008 issue of the *Texas Register* (33 TexReg 9958) and will not
11 be republished. These amendments are effective March 1, 2009.

12
13 EXPLANATION OF ADOPTED AMENDMENTS

14 The department is in the process of restructuring department
15 duties and responsibilities. With these changes, the department
16 is looking for ways to streamline work processes and increase
17 efficiency in specific programs such as the outdoor advertising
18 program. The department believes that moving from a de-
19 centralized, district-based management system to a central or
20 regional administration process will achieve more uniformity in
21 the program and will be a more efficient use of the state's
22 limited resources. In order to make any changes to the
23 structure of the program, the department must eliminate
24 references to district offices and district engineers throughout
25 the outdoor advertising rules.

1
2 All references to district offices and district engineers are
3 replaced with either the department or the executive director.
4 These changes will allow the department the flexibility to
5 restructure the program in a manner that is most efficient. The
6 department believes that these changes will also improve the
7 consistency of the program.

8
9 Amendments to §21.142, Definitions, delete the definition of
10 director and district engineer. These rules remove all
11 references to director and district engineer; therefore, the
12 definitions are no longer needed. These amendments add the
13 definition of executive director, which is defined as the
14 executive director of the Department of Transportation or the
15 executive director's designee not below the level of regional
16 manager, division director, or office director. The executive
17 director replaces the district engineer throughout these
18 amendments in references to decision authority. The inclusion
19 of the designee language allows the executive director to
20 designate another staff member the responsibilities under the
21 program as long as the selected staff is of a level of regional
22 manager, division director, or office director or higher. The
23 amendments to the definitions are needed to correspond with

1 other amendments.

2

3 Amendments to §21.149, Licenses, replace director with executive
4 director for the approval of license applications, revocations,
5 or suspensions of the license, and the filing of appeal
6 requests. By eliminating the reference to the Right of Way
7 Division Director, the department has the flexibility to
8 structure the outdoor advertising program into either a regional
9 or centralized program. The amendments also make a grammatical
10 correction, changing "outdoor advertisers surety bond" to
11 "outdoor advertiser's surety bond."

12

13 Amendments to §21.150, Permits, replace district engineer with
14 the department for the receipt of permit applications and
15 renewals and requests for replacement permit plates. On these
16 issues, the district engineer is not exercising decision
17 authority. The term is used to provide the location for the
18 documents to be sent and reviewed. The language of the current
19 rule limited the department's ability to review additional
20 submission alternatives such as a web-based system. By this
21 change, the department has the flexibility to review and
22 determine the most efficient manner to receive and review
23 applications. The department will provide submission location

1 information on application forms and other correspondence so
2 that the applicants and affected parties will know where and how
3 to submit documents to the department.

4

5 Amendments to §21.150 also replace the district engineer with
6 the executive director for the approval of permit applications,
7 the notification for the removal of signs or cancellation of a
8 permit, and the approval of non-profit sign applications. This
9 substitution provides the executive director or his designee of
10 a level not below regional manager, division director, or office
11 director decision authority for outdoor advertising issues. By
12 removing references to a particular position these changes allow
13 the department flexibility in structuring the outdoor
14 advertising program into either a regional or centralized
15 program.

16

17 Amendments to §21.151, Local Control, delete the term director
18 of the right of way division and replace it with the executive
19 director as the position to receive information from political
20 subdivisions regarding the local certification program. The
21 amendments also substitute the executive director as the party
22 responsible for consulting with the Federal Highway
23 Administration as it relates to the department's opinion that

1 the political subdivision has adequate sign and zoning
2 ordinances. The amendments also move the authority to de-
3 certify a political subdivision to the executive director. By
4 the new definition, the executive director can designate another
5 employee of a level of regional manager, division director, or
6 office director or higher to carry out these duties. By
7 eliminating the reference to the Right of Way Division Director
8 the department has the flexibility to structure the outdoor
9 advertising program into either a regional or centralized
10 program.

11

12 Amendments to §21.155, Directional Signs, delete reference to
13 district engineer and replace it with the executive director in
14 the determination of whether a particular sign advertises an
15 activity or attraction which is nationally or regionally known
16 and of outstanding interest to the traveling public. By moving
17 this authority to the executive director the department can be
18 more consistent throughout the state in making these types of
19 decisions. This change also allows the department to
20 restructure the outdoor advertising program into either a
21 central or regional program.

22

23 Amendments to §21.160, Relocation, delete the references to

1 district engineer and replace it with the executive director as
2 the approval authority for determining the necessity and
3 approval of the relocation permit application. Changing to the
4 executive director will improve the consistency throughout the
5 state and will allow the department the flexibility in
6 structuring the outdoor advertising program into either a
7 regional or centralized program.

8

9 Amendments to §21.411, Definitions, add the definition of
10 executive director. The term is defined as the executive
11 director of the Department of Transportation or the executive
12 director's designee not below the level of regional manager,
13 division director, or office director. The inclusion of the
14 designee language allows the executive director to designate
15 another staff member the responsibilities under the program as
16 long as the selected staff is of a level of regional manager,
17 division director, or office director or higher. By other
18 amendments, the term has been added throughout the subchapter so
19 it is necessary that the definition be included.

20

21 Amendments to §21.431, Registration of Existing Off-Premise
22 Sign, delete the district engineer and the district office as
23 the location and person in which an applicant submits required

1 permit applications. This change allows the department to
2 review alternative methods for the submission of documents and
3 allows for the flexibility of a central or regional program to
4 accommodate the department's current restructuring efforts. The
5 department will provide submission location information on
6 application forms and other correspondence so that the
7 applicants and affected parties will know where and how to
8 submit documents to the department.

9

10 Amendments to §21.441, Permit for Erection of Off-Premise Sign,
11 replace the district engineer with the executive director
12 regarding who has the authority to approve permit applications
13 and transfers. By designating the executive director, the rules
14 will provide the department the flexibility to establish a
15 central or regional program. This section is also amended by
16 deleting references to the district office to allow the
17 department the ability to review alternative methods for the
18 submission of documents. The department will provide submission
19 location information on application forms and other
20 correspondence so that the applicants and affected parties will
21 know where and how to submit documents to the department. The
22 changes to this section will also provide for more consistent
23 application of the rules throughout the state and also allows

1 for either a central or regional program to accommodate the
2 department's current restructuring efforts.

3
4 Amendments to §21.521, On-Premise Sign Erectors, replace the
5 director of right of way with the executive director with all
6 decision authority regarding on-premise signs. By eliminating
7 the references to the Right of Way Division Director, the
8 department has the flexibility to structure the outdoor
9 advertising program into either a regional or centralized
10 program.

11
12 Amendments to §21.531, Board of Variance, replace the term
13 engineer-director of the department with the executive director.
14 The engineer-director is considered the executive director so
15 there is no transfer of duty under this amendment. The change
16 is only to correct the terminology to the more current term used
17 by the department.

18
19 Amendments to §21.541, Revocation of Permits, replace the
20 director of right of way with the executive director regarding
21 the authority to revoke permits. By eliminating the reference
22 to the Right of Way Division Director, the department has the
23 flexibility to structure the outdoor advertising program into

1 either a regional or centralized program.

2

3 Amendments to §21.561, Removal of Sign, transfer the authority
4 to the executive director to determine whether to order a sign
5 to be removed. This change will provide for more consistent
6 application of this rule throughout the state and will also
7 allow for either a central or regional program to accommodate
8 the department's current restructuring efforts.

9

10 Amendments to §21.572, Notice and Appeal, replace the director
11 of right of way with the executive director regarding the
12 authority to issue revocation notices. The executive director
13 must also receive the requests for the administrative hearing.
14 By eliminating the references to the Right of Way Division
15 Director, the department has the flexibility to structure the
16 outdoor advertising program into either a regional or
17 centralized program.

18

19 COMMENTS

20 No comments on the proposed amendments were received.

21

1 STATUTORY AUTHORITY

2 The amendments are adopted under Transportation Code, §201.101,
3 which provides the commission with the authority to establish
4 rules for the conduct of the work of the department, and more
5 specifically, Transportation Code, §391.032, which provides
6 authority to establish rules to regulate the orderly and
7 effective display of outdoor advertising on primary roads,
8 Transportation Code, §391.065, which provides authority to
9 establish rules to standardize forms and regulate the issuance
10 of outdoor advertising licenses, Transportation Code, §394.004,
11 which provides the commission with the authority to establish
12 rules to regulate the erection and maintenance of signs on rural
13 roads.

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

6 (1) Act--Transportation Code, Chapter 391, concerning
7 beautification of a regulated highway.

8 (2) Commercial or industrial activities--Those activities
9 customarily permitted only in zoned commercial or industrial
10 areas except that none of the following shall be considered
11 commercial or industrial:

12 (A) outdoor advertising structures;

13 (B) agricultural, forestry, ranching, grazing, farming,
14 and related activities, including, but not limited to, temporary
15 wayside fresh produce stands;

16 (C) activities not:

17 (i) housed in a permanent building or structure;

18 (ii) having an indoor restroom, telephone, running
19 water, functioning electrical connections, and adequate heating;

20 or

21 (iii) having permanent flooring other than material
22 such as dirt, gravel, or sand;

23 (D) activities not housed in a permanent building that

1 is visible from the traffic lanes of the main-traveled way;

2 (E) activities conducted in a building primarily used
3 as a residence;

4 (F) railroad right of way;

5 (G) activities that do not have a portion of the
6 regularly used buildings, parking lots, storage or processing
7 areas within 200 feet from the edge of the right of way;

8 (H) activities conducted only seasonally;

9 (I) activities conducted in a building having less than
10 300 square feet of floor space devoted to the activities;

11 (J) activities that do not have at least one person who
12 is at the activity site, performing work, an average of at least
13 30 hours per week or at least five days per week;

14 (K) activities which have not been open for at least 90
15 days;

16 (L) recreational facilities such as campgrounds, golf
17 courses, tennis courts, wild animal parks, and zoos, except for
18 the portion of the activities occupied by permanent buildings
19 which otherwise meet the criteria in this subsection and parking
20 lots;

21 (M) apartment houses or residential condominiums;

22 (N) areas used by public or private preschools,
23 secondary schools, colleges and universities for education or

1 recreation (this does not preclude trade schools or corporate
2 training campuses);

3 (O) quarries or borrow pits, except for any portion of
4 the activities occupied by permanent buildings which otherwise
5 meet the criteria in this subsection and parking lots; and

6 (P) cemeteries, or churches, synagogues, mosques, or
7 other places primarily used for worship.

8 (3) Commission--The Texas Transportation Commission.

9 (4) Conforming sign--A sign which is lawfully in place
10 and complies with size, lighting, and spacing requirements and
11 any other lawful regulations pertaining thereto.

12 (5) Department--The Texas Department of Transportation.

13 [~~(6) Director--The director of the Right of Way Division~~
14 ~~of the department.]~~

15 [~~(7) District engineer--The chief administrative officer~~
16 ~~in charge of a district of the department.]~~

17 (6) [~~(8)~~] Electronic sign--A sign, display, or device
18 that changes its message or copy by programmable electronic or
19 mechanical processes.

20 (7) [~~(9)~~] Erect--To construct, build, raise, assemble,
21 place, affix, attach, embed, create, paint, draw, or in any
22 other way bring into being or establish.

23 (8) Executive Director--The executive director of the

1 department or the executive director's designee not below the
2 level of regional manager, division director, or office
3 director.

4 (9) [~~+10~~] Freeway--A divided highway with frontage roads
5 or full control of access. A proposed freeway is designated a
6 freeway for the purposes of this subchapter when the
7 construction contract is awarded, regardless of whether the
8 main-traveled way is open to the public.

9 (10) [~~+11~~] Interchange--A system of interconnecting
10 roadways in conjunction with one or more grade separations that
11 provides for the movement of traffic between two or more
12 roadways or highways on different levels. A proposed
13 interchange is designated an interchange for the purposes of
14 this subchapter when the construction contract is awarded,
15 regardless of whether it is open to the public.

16 (11) [~~+12~~] Intersection--The common area at the junction
17 of two roadways as defined in Transportation Code, §541.303.

18 (12) [~~+13~~] Interstate highway system--That portion of
19 the national system of interstate and defense highways located
20 within the State of Texas which now or hereafter may be so
21 designated officially by the commission and approved pursuant to
22 23 United States Code §103.

23 (13) [~~+14~~] License--An outdoor advertising license

1 issued by the department pursuant to the provisions of
2 Subchapter C of the Act.

3 (14) [~~(15)~~] Main-traveled way--The traveled way of a
4 highway that carries through traffic. In the case of a divided
5 highway, the traveled way of each of the separate roadways for
6 traffic in opposite directions is a main-traveled way. It does
7 not include such facilities as frontage roads, turning roadways,
8 or parking areas.

9 (15) [~~(16)~~] National Highway System--That portion of
10 connected main highways located within the State of Texas which
11 now or hereafter may be so designated officially by the
12 commission and approved pursuant to 23 United States Code §103.

13 (16) [~~(17)~~] Nonconforming sign--A lawfully erected sign
14 that does not comply with the provisions of a law or rule
15 promulgated at a later date, or which later fails to comply with
16 a law or rule due to changed conditions.

17 (17) [~~(18)~~] Nonprofit sign--A sign erected and maintained
18 by a nonprofit organization in a municipality or the
19 extraterritorial jurisdiction of a municipality if the sign
20 advertises or promotes only the municipality or another
21 political subdivision whose jurisdiction is in whole or in part
22 concurrent with the municipality.

23 (18) [~~(19)~~] Outdoor advertising or sign--An outdoor sign,

1 display, light, device, figure, painting, drawing, message,
2 plaque, placard, poster, billboard, logo or symbol, or other
3 thing which is designed, intended, or used to advertise or
4 inform, if any part of the advertising or information contents
5 is visible from any place on the main-traveled way of a
6 regulated highway.

7 (19) [~~(20)~~] Permit--The authorization granted for either
8 the erection and/or maintenance, of an outdoor advertising sign
9 as provided in the Act, §391.068.

10 (20) [~~(21)~~] Person--An individual, association,
11 partnership, limited partnership, trust, corporation, or other
12 legal entity.

13 (21) [~~(22)~~] Primary system or federal-aid primary system--
14 -That portion of connected main highways which were designated
15 by the commission as the federal-aid primary system in existence
16 on June 1, 1991 and any highway which is not on that system but
17 which is on the National Highway System.

18 (22) [~~(23)~~] Public park--A public park, forest,
19 playground, nature preserve, or scenic area designated and
20 maintained by a political subdivision or governmental agency.

21 (23) [~~(24)~~] Regulated highway--A highway on the
22 interstate highway system or primary system.

23 (24) [~~(25)~~] Removed--The dismantling and removal of a

1 substantial portion of the parts and materials of a sign or sign
2 structure from the view of the motoring public. The term shall
3 not include the temporary removal of a sign face for operational
4 reasons.

5 (25) [~~+26+~~] Rest area--An area of public land designated
6 by the department as a rest area, comfort station, picnic area,
7 or roadside park.

8 (26) [~~+27+~~] Sign face--The part of the sign that contains
9 the message or informative contents and is distinguished from
10 other parts of the sign and other sign faces by separation
11 borders or decorative trim. It does not include lighting
12 fixtures, aprons, and catwalks unless they display part of the
13 message or informative contents of the sign.

14 (27) [~~+28+~~] Sign structure--All of the interrelated parts
15 and materials, such as beams, poles, braces, apron, catwalk, and
16 stringers, that are used, designed to be used, or are intended
17 to be used to support or display a sign face.

18 (28) [~~+29+~~] Traveled way--That portion of the roadway
19 used for the movement of vehicles, exclusive of shoulders.

20 (29) [~~+30+~~] Turning Roadway--A connecting roadway for
21 traffic turning between two intersection legs of an interchange.

22 (30) [~~+31+~~] Unzoned commercial or industrial area--

23 (A) An area along the highway right of way which has

1 not been zoned under authority of law, which is not
2 predominantly used for residential purposes, and which is within
3 800 feet, measured along the edge of the highway right of way,
4 of, and on the same side of the highway as, the principal part
5 of at least two adjacent recognized commercial or industrial
6 activities. To be considered an unzoned commercial or
7 industrial area, the following requirements must be met.

8 (i) A portion of the regularly used buildings,
9 parking lots, storage or processing areas where each respective
10 business activity is conducted must be within 200 feet of the
11 highway right of way and the permanent building where the
12 activity is conducted must be visible from the main-traveled
13 way.

14 (ii) To be considered adjacent, there must be no
15 separation of the regularly used buildings, parking lots,
16 storage or processing areas of the two activities by vacant
17 lots, undeveloped areas over 50 feet wide, roads, or streets.

18 (iii) Two activities may occupy one building as long
19 as each has 300 square feet of floor space dedicated to that
20 activity and otherwise meets the definition of a commercial or
21 industrial activity. There must be separation of the two
22 activities by a dividing wall, separate ownership, or other
23 distinctive characteristics. A separate product line offered by

1 one business will not be considered two activities.

2 (B) An unzoned commercial or industrial area is more
3 specifically identified as follows.

4 (i) The area to be considered, based upon the
5 qualifying activities, is 1,600 feet (800 feet on each side)
6 plus the actual or projected frontage of the commercial or
7 industrial activities, measured along the highway right of way
8 by a depth of 660 feet in accordance with §21.144(b) of this
9 title (relating to Measurements).

10 (ii) The area shall be located on the same side of
11 the highway as the principal part of the qualifying activities.

12 (iii) The area must be considered as a whole prior to
13 the application of the test for predominantly residential.

14 (iv) An area shall be considered to be predominantly
15 residential if more than 50% of the area is being used for
16 residential purposes. Roads and streets with residential
17 property on both sides shall be considered as being used for
18 residential purposes. Other roads and streets will be
19 considered nonresidential.

20 (31) [~~+32~~] Visible--Capable of being seen, whether
21 legible or not, without visual aid by a person with normal
22 visual acuity.

23 (32) [~~+33~~] Zoned commercial or industrial area--An area

1 designated, through a comprehensive zoning action, for general
2 commercial or industrial use by a political subdivision with
3 legal authority to zone. The following areas are not zoned
4 areas:

5 (A) areas that permit limited commercial or industrial
6 activities incident to other primary land uses;

7 (B) areas designated for and created primarily to
8 permit outdoor advertising structures along a regulated highway;

9 (C) unrestricted areas; and

10 (D) small parcels or narrow strips of land that cannot
11 be put to ordinary commercial or industrial use and are
12 designated for a use classification different from and less
13 restrictive than that of the surrounding area.

14

15 §21.149. Licenses.

16 (a) Application and issuance.

17 (1) Except as provided in §21.147 of this title (relating
18 to Exempt Signs), and except as provided in subsection (h) of
19 this section, a person may not erect or maintain a sign as
20 outlined in §21.146 of this title (relating to Signs
21 Controlled), until the person has obtained a license covering
22 the county in which the sign is to be erected or maintained.

23 Licenses are issued by the executive director and are valid for

1 one year. An applicant for a license must file an application
2 in a form prescribed by the department, which shall include, but
3 not be limited to:

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

6 (B) designation of the county or counties in which the
7 signs are to be erected and maintained;

8 (C) the applicant's social security number if the
9 applicant is applying as an individual;

10 (D) the applicant's charter number if the applicant is
11 applying as a business entity, if applicable; and

12 (E) additional information the department deems
13 necessary.

14 (2) The application must be signed, notarized, and filed
15 with the department [~~director~~] in Austin and shall be
16 accompanied by:

17 (A) a fully executed outdoor advertiser's [~~advertisers~~]
18 surety bond:

19 (i) in the amount of \$2,500 for each county in which
20 signs are be erected and maintained up to a maximum of \$10,000
21 for four or more counties;

22 (ii) payable to the commission to reimburse it for
23 removal costs of a sign the license holder unlawfully erects or

1 maintains;

2 (iii) in a form prescribed by the department,
3 executed by a surety company authorized to transact the business
4 of surety insurance in Texas, and the form shall include, but
5 not be limited to:

6 (I) the complete legal name, mailing address, and
7 telephone number of the applicant and the surety company;

8 (II) the bond number assigned by the surety
9 company;

10 (III) the amount of coverage provided by the surety
11 company;

12 (IV) the effective and execution dates of the bond;
13 and

14 (V) additional information the department deems
15 necessary;

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

19 (C) the license fee prescribed by subsection (c) of
20 this section.

21 (3) An outdoor advertising license may not be issued to
22 or held by a corporation or a limited partnership unless the
23 corporation or limited partnership is authorized by the

1 secretary of state to conduct business in the State of Texas.

2 (4) An outdoor advertising license is not transferable
3 and is valid only for the named license holder.

4 (b) License renewals.

5 (1) An outdoor advertising license renewed under this
6 section:

7 (A) shall be valid for a period of one year;

8 (B) must be renewed no later than January 1 of each
9 succeeding year if it was issued prior to January 1, 1991; and

10 (C) must be renewed no later than the anniversary date
11 of the date of issue if issued after January 1, 1991.

12 (2) To renew an outdoor advertising license under this
13 subsection, a license holder must file an application in a form
14 prescribed by the department, which shall include, but not be
15 limited to:

16 (A) the complete legal name, mailing address, and
17 telephone number of the license holder;

18 (B) number of the license being renewed; and

19 (C) additional information the department deems
20 necessary, including proof of continuous bond coverage.

21 (3) The application must be signed by the license holder
22 and filed with the department [~~director~~] in Austin, and shall be
23 accompanied by the renewal fee as prescribed by subsection (c)

1 of this section.

2 (4) The license will not be eligible for renewal if the
3 license holder ceases to be authorized to do business in Texas
4 by the Office of the Secretary of State.

5 (c) Fees.

6 (1) For each outdoor advertising license issued under
7 this section:

8 (A) the initial fee is \$125; and

9 (B) the annual renewal fee is \$60.

10 (2) A fee prescribed in this subsection is payable by
11 check, cashier's check, or money order made payable to the Texas
12 Highway Beautification Fund, and is nonrefundable.

13 (3) If the check or money order submitted in payment of
14 the license or the license renewal fee is dishonored upon
15 presentment by the department, the license or renewal will be
16 void from inception.

17 (d) Temporary Suspension. In the event the executive
18 director is notified by a surety company that a bond is being
19 canceled, the executive director will notify the license holder
20 that a new bond must be obtained and filed with the executive
21 director within 30 days of receipt of the notice or prior to the
22 bond cancellation date, whichever occurs later. Notice shall be
23 presumed to be received five days after mailing. From the bond

1 termination date until continuing bond coverage is provided, the
2 executive director will suspend the issuance of additional
3 permits and the transfer of existing permits.

4 (e) Permanent revocation or permanent suspension. The
5 executive director may suspend the issuance of additional
6 permits or the transfer of existing permits, or revoke a license
7 if:

8 (1) a valid outdoor advertiser' s [~~advertisers~~] surety
9 bond is not provided within the time specified by the department
10 in accordance with subsection (d) of this section; or

11 (2) the license holder violates one or more applicable
12 provisions of this subchapter or the Act.

13 (f) Notice and appeal. When actions for permanent
14 revocation or permanent suspension are taken by the executive
15 director, notice will be sent by certified mail to the address
16 of record provided by the license holder. Notice shall be
17 presumed to be received five days after mailing. The recipient
18 of the notice may provide proof that the notice was not received
19 five days from mailing, in which case, the executive director
20 [~~of right of way~~] may extend the time for requesting a hearing.

21 (1) The notice shall clearly state:

22 (A) the reasons for the action;

23 (B) the effective date; and

1 (C) the right of the license holder to request an
2 administrative hearing.

3 (2) A request for an administrative hearing under this
4 subsection must be made in writing to the executive director in
5 Austin within 10 days of the receipt of the notice.

6 (3) If timely requested, an administrative hearing shall
7 be conducted in accordance with §1.21 et seq. of this title
8 (relating to Contested Case Procedure).

9 (g) Exception for nonprofit signs. A nonprofit
10 organization may erect or maintain a nonprofit sign without
11 obtaining an outdoor advertising license. A permit must be
12 obtained for any sign erected or maintained pursuant to this
13 exception, in accordance with §21.150 of this title (relating to
14 Permits).

15 (h) License expiration/revocation. In the event a license
16 expires without renewal or is revoked pursuant to subsection (e)
17 of this section, any permits issued pursuant to that license
18 also expire.

19
20 §21.150. Permits.

21 (a) Eligibility. Except as provided in subsection (1) of
22 this section, a permit under this section may only be issued to
23 a person holding a valid license issued pursuant to §21.149 of

1 this title (relating to Licenses).

2 (b) Application and issuance.

3 (1) Except as provided in §21.151 of this title (relating
4 to Local Control) a person who desires a permit to erect or
5 maintain a sign along a regulated highway must file an
6 application in a form prescribed by the department, which shall
7 include, but not be limited to:

8 (A) the complete name and address of the applicant;

9 (B) the proposed location and description of the sign;

10 (C) the complete legal name and address of the
11 designated site owner;

12 (D) verification of the applicant's nonprofit status if
13 the sign is a nonprofit sign; and

14 (E) additional information the department deems
15 necessary.

16 (2) No permit may be approved unless the applicant has
17 obtained written permission from the owner of the designated
18 site. The department may provide a space on the permit
19 application for this signature or the applicant may provide a
20 copy of the written lease for the site or a consent statement in
21 a form prescribed by the department. The signature must be the
22 signature of the property owner or the owner's duly authorized
23 representative. The owner's permission operates as permission

1 for the life of the permit, unless the owner provides a written
2 statement that permission for the maintenance of the sign has
3 been withdrawn and documentation showing that the lease allowing
4 the sign has been terminated in accordance with the terms of the
5 lease agreement or through a court order. If the sign owner
6 disputes the lease termination in court with the owner, the
7 department will not cancel the permit until a court order is
8 provided.

9 (3) The application must be signed under oath by the sign
10 owner and filed with the department [~~district engineer in whose~~
11 ~~district the sign is to be erected or maintained,~~] and shall be
12 accompanied by the prescribed fee or fees and, if the sign is
13 located within the jurisdiction of a municipality with a
14 population of more than 1.9 million that is exercising its
15 authority to regulate outdoor advertising, a certified copy of
16 the permit issued by the municipality.

17 (4) An application will not be approved unless the sign
18 for which the permit is requested is located in an unzoned
19 commercial or industrial area or in a zoned commercial or
20 industrial area, and meets all applicable requirements of the
21 sections under this subchapter, or was lawfully in existence
22 when the sign became subject to the Act.

23 (5) If approved, a copy of the application, endorsed by

1 the executive director [~~district engineer, or designee,~~] and a
2 Texas sign permit plate will be issued to the applicant. Not
3 later than 30 days after erection of the permitted sign, or
4 after the issuance of a permit if the sign is lawfully in
5 existence when the highway along which it is located becomes
6 subject to control by the department, the sign owner shall cause
7 the permit plate to be securely attached to that portion of the
8 sign structure nearest the highway and visible from the main-
9 traveled way. If the permit plate becomes illegible, the
10 department may require that a replacement plate be obtained in
11 accordance with subsection (f) of this section. The plate must
12 be attached and may not be removed from the sign described in
13 the application.

14 (6) The proposed location for a new sign must be
15 identified by the applicant on the ground by a stake or paint
16 with at least two feet of the stake visible above the ground.
17 The stake must be set at the proposed location of the center
18 pole. Staking the site is considered part of the application.
19 Stakes must not be moved or removed until the application is
20 denied, or if approved, until the sign has been erected. The
21 sketch submitted with the application must reflect the location
22 of the center-pole and show the exact location of the sign faces
23 in relation to the center pole.

1 (c) Priority. Permits will be considered on a first-come,
2 first-serve basis. If an application is returned because of
3 errors or incomplete information, other applications received
4 for the same or conflicting sites between the time a denied
5 application is returned to the applicant and the time it is
6 resubmitted, will be considered before the resubmitted
7 application. A second application for a conflicting site may be
8 held until a decision is made on the first application.

9 (d) Renewals.

10 (1) Subject to the terms and location stated in the
11 permit application, a permit issued or renewed under this
12 section shall be valid for a period of one year, provided that
13 the sign is erected and maintained in accordance with the
14 applicable sections under this subchapter. The permitted sign
15 must be erected within one year from the date the original
16 permit is issued in order for a sign permit to be eligible for
17 renewal.

18 (2) A permit issued by the department prior to September
19 6, 1985, must be renewed no later than October 1, of each
20 succeeding year.

21 (3) An annual permit issued subsequent to September 5,
22 1985, must be renewed on or before the anniversary date of the
23 date of issuance.

1 (4) If a sign continues to meet all applicable
2 requirements, a permit holder may renew a permit by filing with
3 the department a written request in a form prescribed by the
4 department and the prescribed renewal fee [~~at the district~~
5 ~~office serving the county where the sign is located~~].

6 (e) Transfer.

7 (1) A permit may only be transferred with the written
8 approval of the executive director [~~district engineer~~]. At the
9 time of the transfer, both the transferor and the transferee
10 must hold a valid outdoor advertising license issued pursuant to
11 §21.149 of this title (relating to Licenses), except as provided
12 in subparagraphs (3)-(5) of this subsection.

13 (2) A permit holder who desires to transfer one or more
14 permits must file a written request in a form prescribed by the
15 department and the prescribed transfer fee at the department
16 [~~district office serving the county where the sign is located~~].
17 The transferor and transferee will each be issued a copy of the
18 approved permit transfer form.

19 (3) A permit issued under subsection (1) of this section
20 may be transferred to a nonprofit organization that does not
21 hold a valid outdoor advertising license issued under §21.149 of
22 this title (relating to Licenses) if the permit is transferred
23 for the purpose of maintaining a nonprofit sign.

1 (4) A permit issued under subsection (1) of this section
2 may be transferred for a purpose other than maintaining a
3 nonprofit sign if the transferee holds a valid outdoor
4 advertising license at the time of the transfer.

5 (5) The executive director will approve the transfer of
6 one or more sign permits from a lapsed outdoor advertising
7 license to a valid outdoor advertising license, with or without
8 the signature of the transferor, if:

9 (A) legal documents showing the sale of the sign are
10 provided; and

11 (B) documents are provided that indicate the transferor
12 is dead or cannot be located.

13 (6) A permit that has an unresolved permit violation,
14 will not be transferred. An unresolved permit violation means
15 that a permit cancellation is impending or a cancellation has
16 been abated pursuant to subsection (k) of this section pending
17 the outcome of a hearing.

18 (f) Replacement. In the event a permit plate is lost or
19 stolen, is missing from the sign structure, or becomes
20 illegible, the sign owner must submit [~~to the district engineer~~]
21 a request for a replacement plate in a form prescribed by the
22 department, together with the prescribed replacement plate fee.

23 (g) Fees.

1 (1) Except as provided in paragraphs (2) and (3) of this
2 subsection, for a permit issued pursuant to this section:

3 (A) the original fee is \$96;

4 (B) the annual renewal fee is \$40;

5 (C) the transfer fee is \$25 per permit up to a maximum
6 of \$2,500 for a single transaction; and

7 (D) the replacement plate fee is \$25.

8 (2) For a nonprofit sign permit:

9 (A) the original fee is \$10 for each sign;

10 (B) the annual renewal fee is \$10 for each sign; and

11 (C) the transfer fee is waived for the transfer of a
12 permit issued under subsection (1) of this section if the permit
13 is transferred under subsection (e)(3) of this section. Any
14 other permit transfer is subject to the provisions of paragraph
15 (1) of this subsection.

16 (3) The initial permit fee is \$50 for a sign lawfully in
17 existence which becomes subject to the Act.

18 (4) A fee prescribed in this subsection is payable by
19 check, cashier's check, or money order, and is nonrefundable.

20 (5) If a check or money order submitted for fees
21 described in this section is dishonored upon presentment by the
22 department, the permit, renewal, or transfer will be void from
23 inception.

1 (h) Expiration. A permit automatically expires if:

2 (1) it is not renewed by the permit holder;

3 (2) the license under which it was issued expires or is
4 revoked by the department pursuant to §21.149 of this title
5 (relating to Licenses); or

6 (3) the sign is acquired by the state.

7 (i) Cancellation. The executive director may cancel a
8 permit if the sign structure:

9 (1) is removed;

10 (2) is not maintained in accordance with applicable
11 sections under this subchapter or the Act;

12 (3) is damaged beyond the repair threshold contained in
13 §21.156 of title (relating to Discontinuance of Signs);

14 (4) is abandoned, as determined by §21.156;

15 (5) is not built in the location described on the permit
16 application or in accordance with the description of the
17 structure on the permit application;

18 (6) is built by an applicant who uses false or materially
19 misleading information on the permit application;

20 (7) is located on property owned by a person who
21 withdraws, in writing, the permission granted pursuant to
22 §21.150(b)(2) of this title (relating to Permits);

23 (8) is located in an area in which the activity has

1 ceased in accordance with §21.145(b) of this title (relating to
2 Cessation of Activities);

3 (9) is erected, repaired, or maintained in violation of
4 §21.161 of this title (relating to Destruction of
5 Trees/Violation of Control of Access);

6 (10) has been made more visible by the permit holder
7 clearing vegetation from the highway right of way in violation
8 of §21.161 of this title; or

9 (11) does not have permit plates properly attached under
10 §21.150(b) and (f) of this title (relating to Permits).

11 (j) Removal. If a permit expires without renewal, is
12 canceled without reinstatement, or if a sign other than an
13 exempt sign is erected or maintained without a permit, the owner
14 of the involved sign and sign structure shall, upon written
15 notification by the executive director [~~district engineer~~],
16 remove the sign at no cost to the state.

17 (k) Notice and appeal. Upon determination that a permit
18 should be canceled, the executive director shall mail by
19 certified mail a notice of cancellation to the address of the
20 record license holder. Notice shall be presumed to be received
21 five days after mailing. The recipient of the notice may provide
22 proof that the notice was not received five days from mailing,
23 in which case, the executive director [~~of right of way~~] may

1 extend the time for requesting a hearing.

2 (1) The notice shall clearly state:

3 (A) the reason for the cancellation;

4 (B) the effective date of the cancellation; and

5 (C) the right of the permit holder to request an
6 administrative hearing on the question of the cancellation.

7 (2) A request for an administrative hearing under this
8 subsection must be made in writing to the executive director
9 within 10 days of the receipt of the notice of cancellation.

10 (3) If timely requested, an administrative hearing shall
11 be conducted in accordance with §§1.21 et seq. of this title
12 (relating to Contested Case Procedure), and shall serve to abate
13 the cancellation unless and until that cancellation is affirmed
14 by order of the commission.

15 (1) Nonprofit signs.

16 (1) A nonprofit organization may obtain a permit under
17 this section to erect or maintain a nonprofit sign.

18 (2) In order to qualify for a permit issued under this
19 subsection, a sign must comply with all applicable requirements
20 under this subchapter from which it is not specifically
21 exempted.

22 (3) An application for a permit under this section must
23 include, in detail, the content of the message to be displayed

1 on the sign. Prior to changing the message, the permit holder
2 must obtain the approval of the executive director [~~district~~
3 ~~engineer in whose district the sign is maintained~~].

4 (4) If at any time the sign ceases to be a nonprofit
5 sign, the permit will be subject to cancellation pursuant to
6 subsection (i) of this section.

7 (5) If the holder of a permit issued under this
8 subsection loses its nonprofit status or wishes to advertise or
9 promote something other than the municipality or political
10 subdivision, an outdoor advertising license must be obtained
11 pursuant to §21.149 of this title (relating to Licenses), the
12 permit must be converted to a permit for a sign other than a
13 nonprofit sign, and the holder must pay the original permit and
14 annual renewal fees set forth in subsection (g) of this section.

15 (6) A nonprofit organization that holds a valid permit
16 for a nonconforming sign that would otherwise qualify for a
17 permit under this subsection may convert its permit to one
18 issued under this subsection.

19 (m) Conversion of rural road permits and registrations.
20 The department will convert a registration issued under §21.431
21 of this title (relating to Registration of Existing Off-Premise
22 Signs) or a permit issued under §21.441 of this title (relating
23 to Permit for Erection of Off-Premise Sign) to a permit under

1 this section if a highway previously regulated in accordance
2 with Transportation Code, Chapter 394 becomes subject to control
3 under the Act. A holder of a permit or registration converted
4 under this subsection will not be required to pay an original
5 permit fee under subsection (g) of this section; however, the
6 permit must be renewed annually under subsection (d) of this
7 section, on the date the renewal of the permit or registration
8 issued under §21.431 or §21.441 would have been due. In the
9 event a sign owner has prepaid registration fees, the
10 outstanding prepayment will be credited to the sign owner's
11 annual renewal fee. The department will issue permit plates to
12 a holder of a permit or a registration converted under this
13 subsection at no charge. In the event replacement plates are
14 needed after the initial issuance, fees will be charged in
15 accordance with this section.

16 (n) New highway or change in highway designation. Owners
17 of signs that become subject to the Act because of the
18 construction of a new highway or the change in designation of an
19 existing highway must apply to the department for a permit and
20 must obtain an outdoor advertiser's license pursuant to §21.149
21 of this title (relating to Licenses) within 30 days after being
22 notified by the department that the sign has become subject to
23 the Act. If the owner of the sign cannot be identified from

1 information on the sign, notice may be given by prominently
2 posting notice on the sign for a period of 30 days.

3

4 §21.151. Local Control.

5 (a) Eligibility to certify. Where a political subdivision
6 of the state exercises control over outdoor advertising signs, a
7 permit issued by that political subdivision shall be accepted in
8 lieu of a permit issued by the department, provided the
9 political subdivision has certified to the department that the
10 political subdivision has established and will enforce within
11 its corporate limits standards and criteria for size, lighting,
12 and spacing of outdoor advertising signs consistent with the
13 purposes of the Highway Beautification Act of 1965, 23 United
14 States Code §131, and with customary use. The size, lighting,
15 and spacing requirements of the political subdivision may be
16 more or less restrictive than the criteria contained in this
17 subchapter. This certification shall not apply within the
18 extraterritorial jurisdiction of a political subdivision.

19 (b) Fees and time. The political subdivision may set and
20 retain the fees charged for permits issued by it. A political
21 subdivision may also establish the length of time a permit will
22 remain in effect.

23 (c) Certification process. The executive director, after

1 consulting with the Federal Highway Administration, shall
2 determine whether a political subdivision has an adequate sign
3 and zoning ordinance in compliance with subsection (a) of this
4 section. In order to be considered, the political subdivision
5 must submit the following information to the department

6 [~~director~~]:

7 (1) a copy of its sign ordinance;

8 (2) a copy of its zoning ordinance;

9 (3) information about the number of personnel who will be
10 dedicated to the program and what type of records will be kept;
11 and

12 (4) an enforcement plan.

13 (d) Department review. The department may meet with a
14 political subdivision to ensure that it is enforcing the
15 standards and criteria in accordance with subsection (a) of this
16 section. In addition, the political subdivision shall provide
17 the department [~~applicable district office~~] with:

18 (1) a copy of any amendments to its sign and zoning
19 ordinances when the amendments are proposed and adopted; and

20 (2) a copy of any changes to its corporate limits.

21 (e) Decertification process. The executive director may
22 decertify a political subdivision if it does not have an
23 effective control program, in the opinion of the executive

1 director. The executive director may consider whether:

2 (1) the political subdivision maintains an accurate sign
3 inventory and requires the removal of illegal signs; and

4 (2) the local sign ordinance contains standards and
5 criteria for signs in accordance with subsection (a) of this
6 section.

7 (f) Reinstatement. A political subdivision may be
8 reinstated upon showing a new plan that meets the requirements
9 of subsection (c) of this section.

10

11 §21.155. Directional Signs.

12 (a) Applicability. A directional sign may be erected and
13 maintained without a license and permit issued pursuant to
14 §§21.149-21.150 of this title (relating to Licenses and
15 Permits).

16 (b) Registration. Prior to erecting a directional sign,
17 the owner must file an application on a form prescribed by the
18 department, showing the location, message content, construction,
19 and dimensions of the sign. There will be no fee associated
20 with this registration.

21 (c) Message content. The message on directional signs
22 shall be limited to the identification of the attraction or
23 activity and directional information useful to the traveler in

1 locating the attraction or activity, such as mileage, route
2 numbers, or exit numbers. Descriptive words or phrases, and
3 pictorial or photographic representations of the activity or its
4 environs are prohibited.

5 (d) Selection method and criteria.

6 (1) Privately owned activities or attractions eligible
7 for directional signing are limited to:

8 (A) natural phenomena;

9 (B) scenic attractions;

10 (C) historic, educational, cultural, scientific, and
11 religious sites; and

12 (D) outdoor recreational areas.

13 (2) Privately owned attractions or activities must be of
14 national or regional interest to the traveling public. Examples
15 of these sites may be found in the National Register of Historic
16 Places, the National Registry of Natural Landmarks published by
17 the U.S. Department of Interior, and the "Texas State Travel
18 Guide" published by the State of Texas. The executive director
19 [~~Each district engineer~~] is authorized to determine whether a
20 particular sign advertises an activity or attraction which is
21 nationally or regionally known and of outstanding interest to
22 the traveling public.

23 (e) Prohibited signs. The following directional signs are

1 prohibited:

2 (1) signs advertising activities that are illegal under
3 federal or state law or regulation in effect at the location of
4 those signs or activities;

5 (2) signs located in such a manner as to obscure or
6 otherwise interfere with the effectiveness of an official
7 traffic sign, signal, or device, or obstruct or interfere with
8 the driver's view of approaching, merging, or intersecting
9 traffic;

10 (3) signs erected or maintained upon trees or painted or
11 drawn upon rocks or other natural features;

12 (4) obsolete signs;

13 (5) signs that are structurally unsafe or in disrepair;

14 (6) signs that move or have animated or moving parts; and

15 (7) signs located in rest areas, parklands, or scenic
16 areas.

17 (f) Size.

18 (1) No sign shall exceed a maximum of:

19 (A) 150 square feet;

20 (B) 20 feet in height; or

21 (C) 20 feet in length.

22 (2) All dimensions include border and trim, but exclude
23 supports.

1 (g) Lighting. A sign may be illuminated except for a sign
2 that:

3 (1) contains, includes, or is illuminated by any
4 flashing, intermittent, or moving light or lights;

5 (2) does not effectively shield beams or rays of light
6 from being directed at any portion of the traveled way of an
7 interstate or primary highway;

8 (3) is of such intensity or brilliance that it:

9 (A) causes glare or impairs the vision of the driver of
10 any motor vehicle; or

11 (B) interferes with a driver's operation of a motor
12 vehicle; or

13 (4) is so illuminated as to interfere with the
14 effectiveness of or obscure an official traffic sign, device, or
15 signal.

16 (h) Spacing.

17 (1) A directional sign may not be located within 2,000
18 feet of an interchange or intersection at grade along the
19 interstate system or other primary system. The measurement is
20 made from the nearest point of the beginning, ending, or
21 pavement widening at the exit from or entrance to the main-
22 traveled way.

23 (2) A directional sign may not be located within 2,000

1 feet of a rest area, park, or scenic area.

2 (3) Two directional signs facing the same direction of
3 travel may not be spaced less than one mile apart.

4 (4) No more than three directional signs pertaining to
5 the same activity and facing the same direction of travel may be
6 erected along a single route approaching the activity.

7 (5) A sign located adjacent to the interstate system must
8 be within 75 air miles of the activity.

9 (6) A sign located adjacent to the primary system must be
10 within 50 air miles of the activity.

11

12 §21.160. Relocation.

13 (a) Purpose. This section provides for the relocation of
14 certain signs along regulated highways within the state of Texas
15 that would otherwise be precluded under this subchapter. All
16 requirements under this subchapter are to be complied with to
17 the extent that they are not in conflict with the provisions of
18 this section.

19 (b) Permit. When a sign within the proposed highway right
20 of way is to be relocated to accommodate a regulated highway
21 project, [~~the district engineer of~~] the department [~~within whose~~
22 ~~jurisdiction the sign is located~~] may issue a permit under the
23 conditions set forth in subsections (c) and (d) of this section.

1 (c) Requirements.

2 (1) A new sign permit application shall be submitted but
3 will not require payment of a permit fee.

4 (2) Sign relocation shall be in accordance with all local
5 codes, ordinances, and applicable laws.

6 (3) The executive director [~~district engineer~~] shall
7 initially determine whether the permit is necessary to avoid
8 excessive project costs and/or a delay in the completion of the
9 project.

10 (4) The existing sign to be relocated must be an off-
11 premise sign legally erected and maintained.

12 (5) The sign must be situated after its relocation
13 according to the following priority:

14 (A) upon the remainder of the same tract or parcel of
15 land upon which it was situated before its relocation, if any;

16 (B) if there is no remainder or if the remainder is not
17 of sufficient size or suitable configuration for the relocation
18 of the sign, then upon the property abutting the proposed
19 highway right of way at the original sign location or upon
20 property abutting the insufficient remainder, if available;

21 (C) on property adjacent to the locations named in
22 subparagraphs (A) or (B) of this paragraph;

23 (D) to another location within 50 miles of the original

1 sign location, within the same department-designated district;
2 or

3 (E) to another location within 50 miles of the original
4 sign location, within another district of the department, with
5 the approval of the executive director [~~district engineer where~~
6 ~~the sign is to be relocated~~].

7 (6) If possible, the sign is to be placed in the same
8 relative position as to line of sight.

9 (7) The relocated sign must be within a zoned commercial
10 or industrial area or an unzoned commercial or industrial area,
11 except that an unzoned commercial or industrial area may include
12 only one recognized commercial or industrial activity.

13 (8) The relocated sign location must meet the following
14 spacing criteria.

15 (A) The sign may not be placed where it is likely to
16 cause a driver to be unduly distracted in any way or where it
17 will obscure or otherwise interfere with the effectiveness of an
18 official traffic sign, signal, or device, or obstruct or
19 interfere with the driver's view of approaching, merging, or
20 intersecting traffic, whether the intersection be of two or more
21 highways or the intersection of a highway with a railroad.

22 (B) The sign may not be placed within 500 feet of a
23 public park that is adjacent to a regulated highway. This

1 prohibition shall apply:

2 (i) on either side of the highway on a nonfreeway

3 primary system; and

4 (ii) on the side of the highway adjacent to the

5 public park on an interstate or freeway primary system.

6 (C) If the sign is to be placed outside an incorporated

7 municipality along a regulated highway, the sign may not be

8 located in areas adjacent to or within 500 feet of:

9 (i) interchanges, intersections at grade and rest

10 areas; or

11 (ii) ramps, their acceleration and deceleration lanes

12 (Such distances shall be measured along the highway from the

13 nearest point of beginning or ending of pavement widening at the

14 exit from, or entrance to, the main-traveled way.)

15 (D) The sign may not be erected along the interstate

16 and freeway primary systems closer than 500 feet apart on the

17 same side of the highway.

18 (E) The sign may not be erected along the nonfreeway

19 primary system located outside of municipalities closer than 300

20 feet apart on the same side of the highway.

21 (F) The sign may not be erected along the nonfreeway

22 primary system in municipalities closer than 100 feet apart on

23 the same side of the highway.

1 (G) The sign may not be erected within five feet of any
2 highway right of way line.

3 (9) The size, configuration, and construction of the
4 relocated sign must conform to the following provisions.

5 (A) The maximum area for any one sign face shall be
6 1,200 square feet, with a maximum height of 25 feet and a
7 maximum length of 60 feet.

8 (B) The maximum size limitations shall apply to each
9 sign face visible to approaching traffic.

10 (C) The area shall be measured by the smallest square,
11 rectangle, triangle, circle, or combination thereof which will
12 encompass the entire sign.

13 (D) Sign faces may be placed back-to-back, side-by-
14 side, stacked, or in "V" type construction with not more than
15 two displays to each facing. The sign structure and faces shall
16 be considered one sign.

17 (E) A sign face that exceeds 350 square feet in area
18 may not be stacked or placed side-by-side.

19 (F) In no event shall the size of the sign face, the
20 number of sign faces, or lighting, if any, of the relocated sign
21 exceed the size, number of faces, or lighting, if any, of the
22 existing sign.

23 (G) The relocated sign will be constructed with the

1 same number of poles and of the same type of materials as the
2 existing sign.

3 (H) The relocated sign must not exceed the maximum
4 height set forth in §21.158 of this title (relating to Height
5 Restrictions).

6 (10) Except in accordance with subsection (g) of this
7 section, the sign replacement site is to be approved by the
8 executive director [~~district engineer or his designee~~] prior to
9 the removal of the existing sign.

10 (11) Relocation benefits will be paid in accordance with
11 Subchapter G of this chapter.

12 (12) The spacing requirements as provided in paragraph
13 (8) of this subsection do not apply to:

14 (A) signs separated by buildings, natural surroundings,
15 or other obstructions which cause only one sign located within
16 the specified spacing to be visible at any one time; and

17 (B) on-premise or directional or official signs, as
18 cited in Transportation Code, §391.031(b), nor shall
19 measurements be made from these signs.

20 (d) Cessation of activities. When a commercial or
21 industrial activity ceases and a sign other than an exempt sign
22 is no longer located within 800 feet of at least one recognized
23 commercial or industrial activity located on the same side of

1 the highway, the sign will be considered nonconforming.

2 (e) Waiver of damages. The sign owner must enter into a
3 written agreement with the acquiring agency waiving and
4 releasing any claim for damages against the acquiring agency and
5 the state for any temporary or permanent taking of the sign in
6 consideration of the payment by the acquiring agency of
7 relocation benefits paid in accordance with Subchapter G of this
8 chapter.

9 (f) Bisection. An existing permit may be amended by the
10 department [~~district office (serving the county where the sign~~
11 ~~is located)~~] to authorize:

12 (1) a monopole sign face overhanging the proposed right
13 of way to be shifted to the remainder;

14 (2) a multipole structure located partially in the
15 proposed right of way to have the poles in the right of way
16 moved to the remainder and the face shifted to the relocated
17 poles; or

18 (3) the sign to be bisected and the face size reduced.

19 (g) Relocation within a certified city. If a displaced
20 sign is subject to the jurisdiction of a municipality certified
21 to control outdoor advertising pursuant to §21.151 of this title
22 (relating to Local Control), and the sign will be relocated
23 within that municipality, permission to relocate the sign must

1 be obtained only from the certified municipality, in accordance
2 with the municipality's sign and zoning ordinances. A permit
3 from the municipality will be required in order to receive
4 relocation benefits from the department. A separate permit from
5 the department is not required and the specific requirements for
6 a relocation permit contained in subsection (c) of this section
7 need not be met.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.411. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Act--Transportation Code, Chapter 394.

6 (2) Commission--The Texas Transportation Commission.

7 (3) Department--The Texas Department of Transportation.

8 (4) Erect--To construct, build, raise, assemble, place,
9 affix, attach, embed, create, paint, draw, or in any way bring
10 into being or establish, except when performed incidental to the
11 change of an advertising message or to normal maintenance or
12 repair of an existing sign.

13 (5) Executive Director--The executive director of the
14 department or the executive director's designee not below the
15 level of regional manager, division director, or office
16 director.

17 (6) [~~5~~] Governmental entity--The state, an agency of
18 the state, or a political subdivision of the state, including a
19 county, municipality, public school district, or special purpose
20 district.

21 (7) [~~6~~] Main traveled way--The through traffic lanes
22 exclusive of frontage roads, auxiliary lanes, and ramps.

23 (8) [~~7~~] Normal maintenance--The process of keeping a

1 sign in good repair. When the sign is being converted from a
2 multiple pole structure to a monopole structure or is being
3 repaired at a cost in excess of 50% of the cost of erecting a
4 new sign of the same type at the same location, each such action
5 constitutes a replacement rather than normal maintenance and a
6 sign permit will be required if the sign is an off-premise sign.
7 No sign required to be registered or permitted may be enlarged
8 more than 10% of the size shown on the permit or registration
9 without first obtaining a permit authorizing such enlargement.
10 Lighting may not be added to any sign nor may more intense
11 lighting be added to any sign without first obtaining a permit
12 authorizing such addition. No person shall erect, repair, or
13 maintain a sign while such person or the equipment being used is
14 on any road right-of-way.

15 (9) [~~8~~] Off-premise sign--A sign displaying advertising
16 copy that pertains to a business, person, organization,
17 activity, event, place, service, or product not principally
18 located or primarily manufactured or sold on the premises on
19 which the sign is located.

20 (10) [~~9~~] On-premise sign--A freestanding sign
21 identifying or advertising a business, person, or activity, and
22 installed and maintained on the same premises as the business,
23 person, or activity.

1 (11) [~~+10~~] Permit--The authorization granted pursuant to
2 action by the Texas Transportation Commission for the erection
3 of a sign, subject to these sections and the Act.

4 (12) [~~+11~~] Person--An individual, association,
5 corporation, or other legal entity.

6 (13) [~~+12~~] Portable sign--A sign designed to be mounted
7 on a trailer, bench, wheeled carrier, or other nonmotorized
8 mobile structure or on skids or legs.

9 (14) [~~+13~~] Recognized commercial or industrial
10 activities--Those activities customarily permitted only in zoned
11 commercial or industrial areas except that none of the following
12 shall be considered recognized commercial or industrial
13 activities:

14 (A) outdoor advertising structures;

15 (B) agricultural, forestry, ranching, grazing, farming,
16 and related activities, including, but not limited to, temporary
17 wayside fresh produce stands;

18 (C) activities not housed in a permanent building or
19 structure having functioning water and sewage connections and
20 functioning electrical connections;

21 (D) activities conducted in a building primarily used
22 as a residence;

23 (E) railroad right-of-way;

1 (F) activities more than 200 feet from the edge of the
2 right-of-way of a rural road;

3 (G) activities conducted only seasonally or which are
4 not conducted an average of at least 30 hours per week or at
5 least five days per week;

6 (H) activities conducted in a building having less than
7 300 square feet of floor space devoted to such activities;

8 (I) activities not conducted by human beings;

9 (J) activities which have not existed at least 90 days.

10 (15) [~~+14~~] Rural road--A road, street, way, highway,
11 thoroughfare, or bridge that is located in an unincorporated
12 area and is not privately owned or controlled, any part of which
13 is open to the public for vehicular traffic, and over which the
14 state or any of its political subdivisions have jurisdiction.

15 (16) [~~+15~~] Sign--An outdoor structure, sign, display,
16 light, device, figure, painting, drawing, message, plaque,
17 poster, billboard, or other thing that is designed, intended, or
18 used to advertise or inform and that is visible from the main-
19 traveled way of a rural road.

20 (17) [~~+16~~] Small business--A legal entity, including a
21 corporation, partnership, or sole proprietorship that:

22 (A) is formed for the purpose of making a profit;

23 (B) is independently owned and operated;

1 (C) is not a publicly held corporation; and

2 (D) has fewer than 100 employees or less than \$1

3 million in annual gross receipts in a fiscal year.

4

5 §21.431. Registration of Existing Off-Premise Signs.

6 (a) Not later than December 30, 1985, each owner of an off-
7 premise sign, other than an exempt sign, erected before
8 September 1, 1985, that is visible from the main-traveled way of
9 a rural road shall either remove the sign or register the sign
10 with the commission. The owner must pay a nonrefundable fee of
11 \$25 for each sign that is registered. Such registration is
12 valid for one year. The registration may be renewed upon
13 payment of a nonrefundable renewal fee of \$10 per sign per year
14 renewed, but may not be renewed for a sign renewal period in
15 excess of five years at any one time.

16 (b) In order to register a sign, the owner shall first
17 provide [~~the district engineer of~~] the department [~~district~~
18 ~~office serving the county in which the sign is located~~] with
19 sufficient information [~~in duplicate and~~] in writing or
20 pictorially, such as a photograph or sketch, to positively
21 identify the sign and its location, including the name or number
22 of the road along which it is located, how to locate the road
23 and the sign location, the direction the sign can be found from

1 the road, the overall height and length of the sign, a
2 description of the material of which it is constructed, the
3 number of supporting poles, whether it is illuminated or not,
4 the current message on display, the name and mailing address of
5 the sign owner, and the name and mailing address of the site
6 owner. Such registration shall include a statement under oath
7 that each sign being registered was erected prior to September
8 1, 1985. No particular form shall be necessary, but a form
9 prescribed by the department may be used. The nonrefundable fee
10 of \$25 per sign must be submitted with the registration request.
11 The fee may be paid by the registrant's check or by cashier's
12 check or money order supplied by the registrant in an amount
13 sufficient to cover all signs sought to be registered in that
14 submission.

15 (c) Upon completion of the registration, a copy of the
16 registration paper used will be sent to the sign owner along
17 with a registration number which shall be displayed on the sign
18 structure, within 30 days after receipt thereof, in a form and
19 manner prescribed by the department. Such registration shall be
20 valid for one year from the date of registration.

21 (d) The registration of an off-premise sign in existence
22 before September 1, 1985, may be renewed for an additional
23 period of up to five years upon written request to [~~the district~~

1 ~~engineer of~~] the department by providing [~~district office~~
2 ~~servicing the county in which the sign is located provided~~]
3 identification of the sign and the required nonrefundable fee of
4 \$10 per sign for each year the renewal is requested are
5 submitted with such request and provided that such request may
6 not be for a single renewal period in excess of five years and
7 that such request and the required fee shall be received by the
8 department [~~such district engineer~~] before the existing
9 registration expires.

10 (e) Other than an exempt sign, any off-premise sign which
11 was in existence before September 1, 1985, and not duly
12 registered or for which the registration is not kept renewed as
13 provided in these sections shall be removed by the owner thereof
14 at the owner's expense upon written notification by [~~a district~~
15 ~~engineer of~~] the department [~~district office servicing the county~~
16 ~~in which the sign is located~~].

17 (f) The registration of a sign may be transferred upon
18 filing with [~~the district engineer of~~] the department [~~district~~
19 ~~office servicing the county where the sign is located~~] three duly
20 executed copies of the form prescribed by the department, and
21 upon payment of a nonrefundable transfer fee of \$25 for each
22 sign registration being transferred. One copy of each approved
23 transfer shall be sent to the transferor, one copy shall be sent

1 to the transferee, and one copy shall be retained by the
2 department [~~district engineer~~].

3

4 §21.441. Permit for Erection of Off-Premise Sign.

5 (a) Applicability. A person shall not erect or cause to be
6 erected an off-premise sign, other than an exempt sign, that is
7 visible from the main-traveled way of a rural road without first
8 having obtained a permit to do so from the commission acting by
9 and through the executive director [~~district engineer of the~~
10 ~~department district office serving the county in which the~~
11 ~~proposed sign is to be located~~].

12 (b) Application and issuance.

13 (1) A sign owner who desires to erect or maintain a sign
14 as required in this section must file an application, in
15 duplicate, in a form prescribed by the department, which shall
16 include, but not be limited to:

17 (A) the name and mailing address of the applicant;

18 (B) proposed location and description of the sign;

19 (C) how to find the road along which the sign is to be
20 erected;

21 (D) name and address of the site owner;

22 (E) indication that the site owner has consented to the
23 erection of the sign; and

1 (F) such additional information as the department deems
2 necessary.

3 (2) The application must be signed under oath by the sign
4 owner and filed with the department [~~district engineer in whose~~
5 ~~district the sign is to be erected,~~] and shall be accompanied
6 by:

7 (A) the prescribed fee or fees; and

8 (B) if the outdoor advertising is located within the
9 jurisdiction of a municipality with a population of more than
10 1.9 million, a certified copy of the permit for the sign issued
11 by the municipality; and

12 (C) if the proposed sign will have a height of six feet
13 or more above the ground, as measured above the average level of
14 the ground adjacent to the proposed structure, a certificate
15 signed by the sign owner to the effect that the proposed sign
16 will withstand wind load pressures in pounds per square foot as
17 set out in the following table.

18 Figure: 43 TAC §21.441(b)(2)(C)

Wind Load Pressure in Pounds per Square Foot	
Height, in feet above ground, as measured above the average level of the ground adjacent to the structure	Pressure, pounds per square foot
0 - 5	0
6 - 30	20
31 - 50	25
51 - 99	35
100 - 199	45

200 - 299	50
300 - 399	55
400 - 500	60
501 - 800	70
Over 800	77

1

2 (3) Before approving a permit application, the department
3 [~~district engineer~~] shall determine that the proposed sign will:

4 (A) be located within 800 feet of a recognized
5 commercial or industrial activity located on the same side of
6 the roadway;

7 (B) be located along a roadway subject to control under
8 these sections;

9 (C) meet all applicable requirements of the sections
10 under this undesignated head; and

11 (D) not be subject to control under the Texas Litter
12 Abatement Act.

13 (4) If approved, a copy of the application will be
14 endorsed by the executive director [~~district engineer~~] and
15 returned to the applicant along with a permit number. Within 30
16 days after it is received, the permit number shall be displayed
17 on the sign structure in the following manner:

18 (A) legibly displayed on the edge of the sign structure
19 nearest the roadway; and

20 (B) in numerals with a minimum height of two inches and

1 minimum width of one inch.

2 (c) Permit renewals.

3 (1) Subject to the terms and location stated in the
4 permit application, a permit issued under this section shall be
5 valid for a period of one year, provided the sign is erected and
6 maintained in accordance with the applicable sections under this
7 undesignated head. The permitted sign must be erected within
8 one year from the date the original permit is issued in order
9 for a sign permit to be eligible for renewal.

10 (2) To renew a permit under this subsection, a permit
11 holder must file with the department [~~district engineer~~] a
12 written request in a form prescribed by the department, together
13 with the prescribed renewal fee; and further provided that the
14 sign continues to meet all applicable requirements.

15 (d) Permit transfer.

16 (1) A permit may only be assigned with the written
17 approval of the executive director [~~district engineer~~].

18 (2) The holder of a permit or permits who desires to
19 transfer one or more permits must file [~~with the district~~
20 ~~engineer~~] a request in a form prescribed by the department,
21 together with the prescribed transfer fee. The transferor and
22 transferee will each be issued a copy of the approved permit
23 transfer form.

1 (e) Permit fees.

2 (1) For a permit issued pursuant to this section:

3 (A) the original fee is \$96 for each sign;

4 (B) the annual renewal fee is \$40; and

5 (C) the fee is \$25 for each permit transferred.

6 (2) A fee prescribed in this subsection is payable to the
7 State of Texas, and is nonrefundable.

8

9 §21.521. On-Premise Sign Erectors.

10 (a) Any person engaged primarily in the business of
11 erecting signs that advertise companies located or products sold
12 on the premises on which the signs are erected must file with
13 the executive director [~~of the right of way division~~] on behalf
14 of the commission a surety bond in the amount of at least
15 \$100,000 and payable to the commission to reimburse it for the
16 cost of removing a sign unlawfully erected or maintained by the
17 person; a person may not be exempted from this requirement. The
18 form of such bond shall be as provided in a form prescribed by
19 the department. Such bond shall be kept in force so long as
20 such person remains primarily engaged in such business.

21 (b) In the event a person files with the executive director
22 [~~of the right of way division of the department~~] an affidavit to
23 the effect that such person is not engaged primarily in the

1 business of erecting on-premise signs, the statement in such
2 affidavit shall be accepted as fact until probative evidence to
3 the contrary has been received by the executive director [~~of the~~
4 ~~right of way division~~].

5

6 §21.531. Board of Variance.

7 (a) A board of variance is hereby established. It shall be
8 composed of those persons appointed thereto by the executive
9 director [~~engineer-director of the department~~]. A majority of
10 the members of such board shall constitute a quorum.

11 (b) Such board of variance shall meet and consider appeals
12 from actions taken under these sections and shall give the
13 applicant at least 10 days notice of the time and place of such
14 meeting and afford the applicant an opportunity to be present at
15 such meeting and present such evidence as he may have regarding
16 such application.

17 (c) The board of variance may make minor exceptions to
18 these sections in those instances in which a substantial
19 injustice would result unless the minor exceptions were granted
20 in appropriate cases and subject to appropriate conditions and
21 safeguards.

22 (d) Any permit issued pursuant to a variance shall be
23 subject to a fee of \$1,000.

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§21.541. Revocation of Permits. The commission, acting by and through the executive director [~~of the right of way division~~], may suspend and revoke a permit which was issued under these sections if the permittee:

- (1) violates any provisions or requirements of the Act;
- or
- (2) violates a rule adopted by the commission under the Act.

§21.561. Removal of Sign.

(a) Upon written notification by the executive director [~~a district engineer of the department~~], any off-premise sign, other than an exempt sign, erected on or after September 1, 1985, must be removed if:

- (1) the sign was erected without a permit;
- (2) the permit is not kept renewed in accordance with the provisions in §21.441(c) of this title (relating to Permit for Erection of Off-Premise Sign); or
- (3) a permit is revoked in accordance with §21.541 of this title (relating to Revocation of Permits).

(b) The owner shall remove the sign at the owner's expense.

1 §21.572. Notice and Appeal. Upon determination that a permit
2 should be revoked or administrative penalties sought, the
3 executive director [~~of right of way~~] shall mail a notice of
4 revocation or imposition of administrative penalties to the last
5 known address of the holder of the permit by certified mail.

6 (1) The notice shall clearly state:

7 (A) the reasons for the revocation or the imposition of
8 administrative penalties;

9 (B) the effective date of the revocation; and

10 (C) the right of the holder of the permit to request an
11 administrative hearing on the question of the revocation or the
12 imposition of administrative penalties.

13 (2) A request for an administrative hearing under this
14 section must be made in writing to the executive director [~~of~~
15 ~~right of way~~] within 10 days of the receipt of the notice of
16 revocation or the imposition of administrative penalties.

17 (3) If timely requested, an administrative hearing shall
18 be conducted in accordance with §§1.21-1.61 of this title
19 (relating to Contested Case Procedure), and shall serve to abate
20 the revocation or imposition of administrative penalties unless
21 and until that action is affirmed by order of the commission.