

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 §21.142, definitions, §21.150, permits, §21.154, lighting and movement of signs, new §21.163, electronic signs, amendments to §21.441, permit for erection of off-premise sign, and §21.551, prohibited signs, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new section, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.142, §21.150, and §21.154, new §21.163, and amendments to §21.441, and §21.551 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:

Recommended by:

Director, Right of Way Division

Executive Director

Minute
Number Date
 Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §21.142, concerning definitions, §21.150,
4 concerning permits, §21.154, concerning lighting of signs, new
5 §21.163, concerning electronic signs, amendments to §21.441,
6 concerning permit for erection of off-premise sign, and §21.551
7 concerning prohibited signs.

8

9 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

10 The amendments to §21.150 and §21.441 implement House Bill 2944
11 (HB 2944), 80th Legislative Session, 2007. The changes to
12 §21.142, §21.154, §21.551 and the addition of new §21.163
13 address issues presented by current technology in the outdoor
14 advertising industry to allow limited use of electronic signs
15 along regulated highways of the state.

16

17 Amendments to §21.142, Definitions, define an electronic sign to
18 be a sign, display, or device that changes its message by
19 programmable electronic or mechanical processes.

20

21 House Bill 2944 amends Transportation Code, §391.068, to provide
22 that the commission may not issue a permit for a sign within the
23 jurisdiction of a municipality with a population of more than
24 1.9 million that exercises its authority to regulate outdoor
25 advertising unless the municipality has issued a permit for the

1 sign. To comply with HB 2944, amendments to §21.150, Permits,
2 require that an application for a permit for a sign along a
3 regulated highway that is to be located within the jurisdiction
4 of a municipality with a population of more than 1.9 million be
5 accompanied by a certified copy of the permit issued by the
6 municipality.

7
8 Amendments to §21.154, Lighting and Movement of Signs, delete
9 the reference to LED (light emitting diode) screen and other
10 video displays to authorize the use of LED displays as
11 electronic signs.

12
13 New §21.163 regulates the use of electronic signs. The rules
14 place limits on electronic signs to maintain safety on highways.

15
16 New §21.163(a), Electronic images, sets forth the department's
17 determination that the use of an electronic image is not the use
18 of flashing, intermittent, or moving light and, therefore, does
19 not violate §21.154 or any other rule, regulation, or standard
20 promulgated by the department or any agreement between the
21 department and the Secretary of Transportation of the United
22 States that prohibits the use of such technology.

23
24 To comply with federal requirements, and with respect to the
25 prohibition on mobile signs, in order to prevent temporary

1 electronic signs, new §21.163(b), Prohibitions, prohibits the
2 use of flashing, intermittent, or moving lights to illuminate
3 signs; prohibits signs from displaying animated, moving video,
4 or scrolling advertising; prohibits signs that consist of a
5 static image projected upon a stationary object; and prohibits
6 an electronic sign from being located on a truck or trailer.

7
8 New §21.163(c), Location of electronic signs, describes location
9 requirements for electronic signs to provide control of
10 electronic signs at the local government level.

11
12 New §21.163(d), Upgrading an electronic sign, prohibits the
13 addition of lighting to a nonconforming sign and requires a
14 permit to change a conforming sign to an electronic sign.

15
16 To insure the safety of the traveling public and to insure
17 compliance with federal requirements, new §21.163(e), Eligible
18 electronic signs, details criteria for electronic signs,
19 including visibility and display requirements.

20
21 New §21.163(f), Safety, describes requirements necessary for
22 automatic adjustments to the sign concerning possible
23 malfunction and concerning brightness levels to insure the
24 safety of the traveling public.

25

1 New §21.163(g), Owner responsibility, lists owner
2 responsibilities including the requirement that owners
3 coordinate with emergency officials and provide contact
4 information to the department in case of electronic sign
5 malfunction.

6
7 New §21.163(h), Granting permits, provides for permit
8 requirements.

9
10 New §21.163(i), Conflicts with subchapter, provides that §21.163
11 controls in the case of a conflict with other provisions of the
12 subchapter.

13
14 House Bill 2944 amends Transportation Code, §394.021 and
15 §394.022, to provide that the commission may not issue a permit
16 for a sign within the jurisdiction of a municipality with a
17 population of more than 1.9 million exercising its authority to
18 regulate off-premises signs unless the municipality has issued a
19 permit for the sign. To comply with HB 2944, §21.441, Permit
20 for Erection of Off-Premise Sign, requires that an application
21 for a permit for an off-premise sign that is visible from the
22 main-traveled way of a rural road and that is located within the
23 jurisdiction of a municipality with a population of more than
24 1.9 million, must be accompanied by a certified copy of the
25 permit issued by the municipality.

1

2 To insure the safety of the traveling public, §21.551 adds
3 requirements prohibiting animated or scrolling displays and
4 digital signs.

5

6 FISCAL NOTE

7 James Bass, Chief Financial Officer, has determined that for
8 each of the first five years the amendments and new section as
9 proposed are in effect, there will be no fiscal implications for
10 state or local governments as a result of enforcing or
11 administering the amendments and new section. There are no
12 anticipated economic costs for persons required to comply with
13 the sections as proposed.

14

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

19

20 PUBLIC BENEFIT

21 Mr. Campbell has also determined that for each year of the first
22 five years the sections are in effect, the public benefit
23 anticipated as a result of enforcing or administering the
24 amendments and new section will be to provide information to the
25 traveling public. There will be no adverse economic effect on

1 small businesses.

2

3 PUBLIC HEARING

4 Pursuant to the Administrative Procedure Act, Government Code,
5 Chapter 2001, the Texas Department of Transportation will
6 conduct a public hearing to receive comments concerning the
7 proposed rules. The public hearing will be held at 9:00 a.m. on
8 Wednesday, November 28, 2007, in the first floor hearing room of
9 the Dewitt C. Greer State Highway Building, 125 East 11th
10 Street, Austin, Texas and will be conducted in accordance with
11 the procedures specified in 43 TAC §1.5. Those desiring to make
12 comments or presentations may register starting at 8:30 a.m.
13 Any interested persons may appear and offer comments, either
14 orally or in writing; however, questioning of those making
15 presentations will be reserved exclusively to the presiding
16 officer as may be necessary to ensure a complete record. While
17 any person with pertinent comments will be granted an
18 opportunity to present them during the course of the hearing,
19 the presiding officer reserves the right to restrict testimony
20 in terms of time and repetitive content. Organizations,
21 associations, or groups are encouraged to present their commonly
22 held views and identical or similar comments through a
23 representative member when possible. Comments on the proposed
24 text should include appropriate citations to sections,
25 subsections, paragraphs, etc. for proper reference. Any

1 suggestions or requests for alternative language or other
2 revisions to the proposed text should be submitted in written
3 form. Presentations must remain pertinent to the issues being
4 discussed. A person may not assign a portion of his or her time
5 to another speaker. Persons with disabilities who plan to
6 attend this meeting and who may need auxiliary aids or services
7 such as interpreters for persons who are deaf or hearing
8 impaired, readers, large print or Braille, are requested to
9 contact Randall Dillard, Government and Public Affairs Division,
10 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at
11 least two working days prior to the hearing so that appropriate
12 services can be provided.

13

14 SUBMITTAL OF COMMENTS

15 Written comments on the proposed amendments to §21.142, §21.150,
16 §21.154, new §21.163, and amendments to §21.441, and §21.551 may
17 be submitted to John Campbell, Director, Right of Way Division,
18 Texas Department of Transportation, 125 East 11th Street,
19 Austin, Texas 78701-2483. The deadline for receipt of comments
20 is 5:00 p.m. on December 6, 2007.

21

22 STATUTORY AUTHORITY

23 The amendments and new section are proposed under Transportation
24 Code, §201.101, which provides the Texas Transportation
25 Commission with the authority to establish rules for the conduct

1 of the work of the department, and more specifically,
2 Transportation Code, §391.032, which grants the commission the
3 authority to regulate the orderly and effective display of
4 outdoor advertising along a regulated highway within the state
5 and Transportation Code, §394.004, which grants the commission
6 the authority to promote and control the reasonable, orderly,
7 and effective display of outdoor advertising on all highways and
8 roads.

9

10 CROSS REFERENCE TO STATUTE

11 Transportation Code, §391.021, §391.022, §391.032 and §394.004.

1 SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY
2 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 (8) Electronic sign--A sign, display, or device that
18 changes its message or copy by programmable electronic or
19 mechanical processes.

20 (9) [~~8~~] 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 (10) [~~9~~] Freeway--A divided highway with frontage roads

1 or full control of access. A proposed freeway is designated a
2 freeway for the purposes of this subchapter when the
3 construction contract is awarded, regardless of whether the
4 main-traveled way is open to the public.

5 (11) [~~(10)~~] Interchange--A system of interconnecting
6 roadways in conjunction with one or more grade separations that
7 provides for the movement of traffic between two or more
8 roadways or highways on different levels. A proposed
9 interchange is designated an interchange for the purposes of
10 this subchapter when the construction contract is awarded,
11 regardless of whether it is open to the public.

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

14 (13) [~~(12)~~] Interstate highway system--That portion of
15 the national system of interstate and defense highways located
16 within the State of Texas which now or hereafter may be so
17 designated officially by the commission and approved pursuant to
18 23 United States Code §103.

19 (14) [~~(13)~~] License--An outdoor advertising license
20 issued by the department pursuant to the provisions of
21 Subchapter C of the Act.

22 (15) [~~(14)~~] Main-traveled way--The traveled way of a
23 highway that carries through traffic. In the case of a divided

1 highway, the traveled way of each of the separate roadways for
2 traffic in opposite directions is a main-traveled way. It does
3 not include such facilities as frontage roads, turning roadways,
4 or parking areas.

5 (16) [~~15~~] National Highway System--That portion of
6 connected main highways located within the State of Texas which
7 now or hereafter may be so designated officially by the
8 commission and approved pursuant to 23 United States Code §103.

9 (17) [~~16~~] Nonconforming sign--A lawfully erected sign
10 that does not comply with the provisions of a law or rule
11 promulgated at a later date, or which later fails to comply with
12 a law or rule due to changed conditions.

13 (18) [~~17~~] Nonprofit sign--A sign erected and maintained
14 by a nonprofit organization in a municipality or the
15 extraterritorial jurisdiction of a municipality if the sign
16 advertises or promotes only the municipality or another
17 political subdivision whose jurisdiction is in whole or in part
18 concurrent with the municipality.

19 (19) [~~18~~] Outdoor advertising or sign--An outdoor sign,
20 display, light, device, figure, painting, drawing, message,
21 plaque, placard, poster, billboard, logo or symbol, or other
22 thing which is designed, intended, or used to advertise or
23 inform, if any part of the advertising or information contents

1 is visible from any place on the main-traveled way of a
2 regulated highway.

3 (20) [~~+19~~] Permit--The authorization granted for either
4 the erection and/or maintenance, of an outdoor advertising sign
5 as provided in the Act, §391.068.

6 (21) [~~+20~~] Person--An individual, association,
7 partnership, limited partnership, trust, corporation, or other
8 legal entity.

9 (22) [~~+21~~] Primary system or federal-aid primary system--
10 -That portion of connected main highways which were designated
11 by the commission as the federal-aid primary system in existence
12 on June 1, 1991 and any highway which is not on that system but
13 which is on the National Highway System.

14 (23) [~~+22~~] Public park--A public park, forest,
15 playground, nature preserve, or scenic area designated and
16 maintained by a political subdivision or governmental agency.

17 (24) [~~+23~~] Regulated highway--A highway on the
18 interstate highway system or primary system.

19 (25) [~~+24~~] Removed--The dismantling and removal of a
20 substantial portion of the parts and materials of a sign or sign
21 structure from the view of the motoring public. The term shall
22 not include the temporary removal of a sign face for operational
23 reasons.

1 (26) [~~+25~~] Rest area--An area of public land designated
2 by the department as a rest area, comfort station, picnic area,
3 or roadside park.

4 (27) [~~+26~~] Sign face--The part of the sign that contains
5 the message or informative contents and is distinguished from
6 other parts of the sign and other sign faces by separation
7 borders or decorative trim. It does not include lighting
8 fixtures, aprons, and catwalks unless they display part of the
9 message or informative contents of the sign.

10 (28) [~~+27~~] Sign structure--All of the interrelated parts
11 and materials, such as beams, poles, braces, apron, catwalk, and
12 stringers, that are used, designed to be used, or are intended
13 to be used to support or display a sign face.

14 (29) [~~+28~~] Traveled way--That portion of the roadway
15 used for the movement of vehicles, exclusive of shoulders.

16 (30) [~~+29~~] Turning Roadway--A connecting roadway for
17 traffic turning between two intersection legs of an interchange.

18 (31) [~~+30~~] Unzoned commercial or industrial area--

19 (A) An area along the highway right of way which has
20 not been zoned under authority of law, which is not
21 predominantly used for residential purposes, and which is within
22 800 feet, measured along the edge of the highway right of way,
23 of, and on the same side of the highway as, the principal part

1 of at least two adjacent recognized commercial or industrial
2 activities. To be considered an unzoned commercial or
3 industrial area, the following requirements must be met.

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

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

14 (iii) Two activities may occupy one building as long
15 as each has 300 square feet of floor space dedicated to that
16 activity and otherwise meets the definition of a commercial or
17 industrial activity. There must be separation of the two
18 activities by a dividing wall, separate ownership, or other
19 distinctive characteristics. A separate product line offered by
20 one business will not be considered two activities.

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

23 (i) The area to be considered, based upon the

1 qualifying activities, is 1,600 feet (800 feet on each side)
2 plus the actual or projected frontage of the commercial or
3 industrial activities, measured along the highway right of way
4 by a depth of 660 feet in accordance with §21.144(b) of this
5 title (relating to Measurements).

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

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

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

16 (32) [~~+31+~~] Visible--Capable of being seen, whether
17 legible or not, without visual aid by a person with normal
18 visual acuity.

19 (33) [~~+32+~~] Zoned commercial or industrial area--An area
20 designated, through a comprehensive zoning action, for general
21 commercial or industrial use by a political subdivision with
22 legal authority to zone. The following areas are not zoned
23 areas:

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

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

5 (C) unrestricted areas; and

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

10

11 §21.150. Permits.

12 (a) Eligibility. Except as provided in subsection (1) of
13 this section, a permit under this section may only be issued to
14 a person holding a valid license issued pursuant to §21.149 of
15 this title (relating to Licenses).

16 (b) Application and issuance.

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

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

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

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

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

5 (E) additional information the department deems
6 necessary.

7 (2) No permit may be approved unless the applicant has
8 obtained written permission from the owner of the designated
9 site. The department may provide a space on the permit
10 application for this signature or the applicant may provide a
11 copy of the written lease for the site or a consent statement in
12 a form prescribed by the department. The signature must be the
13 signature of the property owner or the owner's duly authorized
14 representative. The owner's permission operates as permission
15 for the life of the permit, unless the owner provides a written
16 statement that permission for the maintenance of the sign has
17 been withdrawn and documentation showing that the lease allowing
18 the sign has been terminated in accordance with the terms of the
19 lease agreement or through a court order. If the sign owner
20 disputes the lease termination in court with the owner, the
21 department will not cancel the permit until a court order is
22 provided.

23 (3) The application must be signed under oath by the sign

1 owner and filed with the district engineer in whose district the
2 sign is to be erected or maintained, and shall be accompanied by
3 the prescribed fee or fees and, if the sign is located within
4 the jurisdiction of a municipality with a population of more
5 than 1.9 million that is exercising its authority to regulate
6 outdoor advertising, a certified copy of the permit issued by
7 the municipality.

8 (4) An application will not be approved unless the sign
9 for which the permit is requested is located in an unzoned
10 commercial or industrial area or in a zoned commercial or
11 industrial area, and meets all applicable requirements of the
12 sections under this subchapter, or was lawfully in existence
13 when the sign became subject to the Act.

14 (5) If approved, a copy of the application, endorsed by
15 the district engineer, or designee, and a Texas sign permit
16 plate will be issued to the applicant. Not later than 30 days
17 after erection of the permitted sign, or after the issuance of a
18 permit if the sign is lawfully in existence when the highway
19 along which it is located becomes subject to control by the
20 department, the sign owner shall cause the permit plate to be
21 securely attached to that portion of the sign structure nearest
22 the highway and visible from the main-traveled way. If the
23 permit plate becomes illegible, the department may require that

1 a replacement plate be obtained in accordance with subsection
2 (f) of this section. The plate must be attached and may not be
3 removed from the sign described in the application.

4 (6) The proposed location for a new sign must be
5 identified by the applicant on the ground by a stake or paint
6 with at least two feet of the stake visible above the ground.
7 The stake must be set at the proposed location of the center
8 pole. Staking the site is considered part of the application.
9 Stakes must not be moved or removed until the application is
10 denied, or if approved, until the sign has been erected. The
11 sketch submitted with the application must reflect the location
12 of the center-pole and show the exact location of the sign faces
13 in relation to the center pole.

14 (c) Priority. Permits will be considered on a first-come,
15 first-serve basis. If an application is returned because of
16 errors or incomplete information, other applications received
17 for the same or conflicting sites between the time a denied
18 application is returned to the applicant and the time it is
19 resubmitted, will be considered before the resubmitted
20 application. A second application for a conflicting site may be
21 held until a decision is made on the first application.

22 (d) Renewals.

23 (1) Subject to the terms and location stated in the

1 permit application, a permit issued or renewed under this
2 section shall be valid for a period of one year, provided that
3 the sign is erected and maintained in accordance with the
4 applicable sections under this subchapter. The permitted sign
5 must be erected within one year from the date the original
6 permit is issued in order for a sign permit to be eligible for
7 renewal.

8 (2) A permit issued by the department prior to September
9 6, 1985, must be renewed no later than October 1, of each
10 succeeding year.

11 (3) An annual permit issued subsequent to September 5,
12 1985, must be renewed on or before the anniversary date of the
13 date of issuance.

14 (4) If a sign continues to meet all applicable
15 requirements, a permit holder may renew a permit by filing a
16 written request in a form prescribed by the department and the
17 prescribed renewal fee at the district office serving the county
18 where the sign is located.

19 (e) Transfer.

20 (1) A permit may only be transferred with the written
21 approval of the district engineer. At the time of the transfer,
22 both the transferor and the transferee must hold a valid outdoor
23 advertising license issued pursuant to §21.149 of this title

1 (relating to Licenses), except as provided in subparagraphs (3)-
2 (5) of this subsection.

3 (2) A permit holder who desires to transfer one or more
4 permits must file a written request in a form prescribed by the
5 department and the prescribed transfer fee at the district
6 office serving the county where the sign is located. The
7 transferor and transferee will each be issued a copy of the
8 approved permit transfer form.

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

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

18 (5) The director will approve the transfer of one or more
19 sign permits from a lapsed outdoor advertising license to a
20 valid outdoor advertising license, with or without the signature
21 of the transferor, if:

22 (A) legal documents showing the sale of the sign are
23 provided; and

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

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

8 (f) Replacement. In the event a permit plate is lost or
9 stolen, is missing from the sign structure, or becomes
10 illegible, the sign owner must submit to the district engineer a
11 request for a replacement plate in a form prescribed by the
12 department, together with the prescribed replacement plate fee.

13 (g) Fees.

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

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

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

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

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

21 (2) For a nonprofit sign permit:

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

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

1 (C) the transfer fee is waived for the transfer of a
2 permit issued under subsection (l) of this section if the permit
3 is transferred under subsection (e)(3) of this section. Any
4 other permit transfer is subject to the provisions of paragraph
5 (1) of this subsection.

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

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

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

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

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

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

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

20 (i) Cancellation. The director may cancel a permit if the
21 sign structure:

22 (1) is removed;

23 (2) is not maintained in accordance with applicable

1 sections under this subchapter or the Act;

2 (3) is damaged beyond the repair threshold contained in

3 §21.156 of title (relating to Discontinuance of Signs);

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

5 (5) is not built in the location described on the permit

6 application or in accordance with the description of the

7 structure on the permit application;

8 (6) is built by an applicant who uses false or materially

9 misleading information on the permit application;

10 (7) is located on property owned by a person who

11 withdraws, in writing, the permission granted pursuant to

12 §21.150(b)(2) of this title (relating to Permits);

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

14 ceased in accordance with §21.145(b) of this title (relating to

15 Cessation of Activities);

16 (9) is erected, repaired, or maintained in violation of

17 §21.161 of this title (relating to Destruction of

18 Trees/Violation of Control of Access);

19 (10) has been made more visible by the permit holder

20 clearing vegetation from the highway right of way in violation

21 of §21.161 of this title; or

22 (11) does not have permit plates properly attached under

23 §21.150(b) and (f) of this title (relating to Permits).

1 (j) Removal. If a permit expires without renewal, is
2 canceled without reinstatement, or if a sign other than an
3 exempt sign is erected or maintained without a permit, the owner
4 of the involved sign and sign structure shall, upon written
5 notification by the district engineer, remove the sign at no
6 cost to the state.

7 (k) Notice and appeal. Upon determination that a permit
8 should be canceled, the director shall mail by certified mail a
9 notice of cancellation to the address of the record license
10 holder. Notice shall be presumed to be received five days after
11 mailing. The recipient of the notice may provide proof that the
12 notice was not received five days from mailing, in which case,
13 the director of right of way may extend the time for requesting
14 a hearing.

15 (1) The notice shall clearly state:

16 (A) the reason for the cancellation;

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

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

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

23 (3) If timely requested, an administrative hearing shall

1 be conducted in accordance with §§1.21 et seq. of this title
2 (relating to Contested Case Procedure), and shall serve to abate
3 the cancellation unless and until that cancellation is affirmed
4 by order of the commission.

5 (1) Nonprofit signs.

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

8 (2) In order to qualify for a permit issued under this
9 subsection, a sign must comply with all applicable requirements
10 under this subchapter from which it is not specifically
11 exempted.

12 (3) An application for a permit under this section must
13 include, in detail, the content of the message to be displayed
14 on the sign. Prior to changing the message, the permit holder
15 must obtain the approval of the district engineer in whose
16 district the sign is maintained.

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

20 (5) If the holder of a permit issued under this
21 subsection loses its nonprofit status or wishes to advertise or
22 promote something other than the municipality or political
23 subdivision, an outdoor advertising license must be obtained

1 pursuant to §21.149 of this title (relating to Licenses), the
2 permit must be converted to a permit for a sign other than a
3 nonprofit sign, and the holder must pay the original permit and
4 annual renewal fees set forth in subsection (g) of this section.

5 (6) A nonprofit organization that holds a valid permit
6 for a nonconforming sign that would otherwise qualify for a
7 permit under this subsection may convert its permit to one
8 issued under this subsection.

9 (m) Conversion of rural road permits and registrations.
10 The department will convert a registration issued under §21.431
11 of this title (relating to Registration of Existing Off-Premise
12 Signs) or a permit issued under §21.441 of this title (relating
13 to Permit for Erection of Off-Premise Sign) to a permit under
14 this section if a highway previously regulated in accordance
15 with Transportation Code, Chapter 394 becomes subject to control
16 under the Act. A holder of a permit or registration converted
17 under this subsection will not be required to pay an original
18 permit fee under subsection (g) of this section; however, the
19 permit must be renewed annually under subsection (d) of this
20 section, on the date the renewal of the permit or registration
21 issued under §21.431 or §21.441 would have been due. In the
22 event a sign owner has prepaid registration fees, the
23 outstanding prepayment will be credited to the sign owner's

1 annual renewal fee. The department will issue permit plates to
2 a holder of a permit or a registration converted under this
3 subsection at no charge. In the event replacement plates are
4 needed after the initial issuance, fees will be charged in
5 accordance with this section.

6 (n) New highway or change in highway designation. Owners
7 of signs that become subject to the Act because of the
8 construction of a new highway or the change in designation of an
9 existing highway must apply to the department for a permit and
10 must obtain an outdoor advertiser's license pursuant to §21.149
11 of this title (relating to Licenses) within 30 days after being
12 notified by the department that the sign has become subject to
13 the Act. If the owner of the sign cannot be identified from
14 information on the sign, notice may be given by prominently
15 posting notice on the sign for a period of 30 days.

16

17 §21.154. Lighting and Movement of Signs.

18 (a) Lighting. Signs may be illuminated except for signs
19 that contain, include, or are illuminated by:

20 (1) any flashing, intermittent, or moving light or
21 lights, including any type of screen using animated or scrolling
22 displays, [~~such as an LED (light emitting diode) screen or any~~
23 ~~other type of video display, even if the message is stationary,~~]

1 except those giving only public service information such as
2 time, date, temperature, weather, or similar information;

3 (2) lights that are:

4 (A) not effectively shielded so as to prevent beams or
5 rays of light from being directed at any portion of the traveled
6 ways of a regulated highway; and

7 (B) of such intensity or brilliance as to cause glare
8 or vision impairment of the driver of any motor vehicle, or
9 which otherwise interfere with any driver's operation of a motor
10 vehicle; and

11 (3) lights that interfere with the effectiveness of, or
12 obscure an official traffic sign, device, or signal.

13 (b) Moving parts. [~~Signs with intermittent messages are~~
14 ~~prohibited, including tri vision signs with rotating slat~~
15 ~~messages.~~] A cutout on a sign may be animated if it:

16 (1) is not lighted or enhanced by reflective material so
17 as to create the illusion of flashing or moving lights; or

18 (2) does not otherwise create a safety hazard to the
19 traveling public.

20 (c) Reflective materials. Reflective paint and reflective
21 disks may be used on a sign face unless they are determined by
22 the department to:

23 (1) create the illusion of flashing or moving lights; or

1 (2) cause an undue distraction to the traveling public.

2 (d) Non-flashing neon lights may be used on sign faces,

3 unless:

4 (1) the sign permit specifies an unilluminated sign
5 structure; or

6 (2) the lights are determined by the department to cause
7 an undue distraction to the traveling public.

8

9 §21.163. Electronic Signs.

10 (a) Electronic images. The department has determined that
11 the use of an electronic image on a digital display device is
12 not the use of a flashing, intermittent, or moving light for the
13 purposes of any rule, regulation, and standard promulgated by
14 the department or any agreement between the department and the
15 Secretary of Transportation of the United States.

16 (b) Prohibitions. An electronic sign shall not:

17 (1) be illuminated by flashing, intermittent, or moving
18 lights;

19 (2) contain or display animated, moving video, or
20 scrolling advertising;

21 (3) consist of a static image projected upon a stationary
22 object; or

23 (4) be a mobile sign located on a truck or trailer.

1 (c) Location of electronic signs.

2 (1) electronic signs may only be located along a
3 regulated highway within the corporate limits of a municipality
4 or within the extraterritorial jurisdiction of a municipality
5 that pursuant to state law has extended its municipal regulation
6 to include that area; and

7 (2) notwithstanding §21.160 of this subchapter, an
8 electronic sign may not be relocated so that any part of the
9 relocated sign would be within 1,500 feet of another sign on the
10 same side of a regulated highway.

11 (d) Upgrading an electronic sign.

12 (1) lighting shall not be added to or used to illuminate
13 nonconforming signs; and

14 (2) a legally conforming sign may be modified to an
15 electronic sign if a new permit is obtained.

16 (e) Eligible electronic signs.

17 (1) electronic signs may be located on either side of the
18 highway; however, each sign must only be visible from one
19 direction of travel;

20 (2) each message on an electronic sign shall be displayed
21 for at least eight seconds and a change of message shall be
22 accomplished within two seconds;

23 (3) a change of message must occur simultaneously on the

1 entire sign face; and

2 (4) an electronic sign may not include more than 20
3 different displays per cycle, excluding emergency displays and
4 public service announcements.

5 (f) Safety. An electronic sign must:

6 (1) contain a default mechanism that freezes the sign in
7 one position if a malfunction occurs; and

8 (2) automatically adjust the intensity of its display
9 according to natural ambient light conditions.

10 (g) Owner responsibilities.

11 (1) the owner of an electronic sign shall coordinate with
12 local authorities to display, when appropriate, emergency
13 information important to the traveling public such as Amber
14 Alerts, or alerts concerning terrorist attacks or natural
15 disasters. Emergency information messages shall remain in the
16 advertising rotation according to the protocols of the agency
17 that issues the information;

18 (2) the sign owner shall provide to the department
19 contact information for a person who is available to be
20 contacted at any time and who is able to turn off the electronic
21 sign promptly after a malfunction occurs; and

22 (3) If the department finds that an electronic sign
23 causes glare or otherwise impairs the vision of the driver of a

1 motor vehicle or otherwise interferes with the operation of a
2 motor vehicle, the owner of the sign, within one hour of a
3 request by the department, shall reduce the intensity of the
4 sign to a level acceptable to the department.

5 (h) Granting permits. The department will grant a permit
6 for an electronic sign if the application for the permit:

7 (1) satisfies the requirements of this subchapter; and

8 (2) has attached to it:

9 (A) a certified copy of the permit issued by the
10 municipality; or

11 (B) if the municipality does not issue permits, a
12 certified copy of written permission for the sign from the
13 municipality.

14 (i) Conflicts with subchapter. All regulations provided by
15 this subchapter apply to electronic signs, except if this
16 section conflicts with another provision of this subchapter,
17 this section controls.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.441. Permit for Erection of Off-Premise Sign.

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

10 (b) Application and issuance.

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

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

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

17 (C) how to find the road along which the sign is to be
18 erected;

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

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

22 (F) such additional information as the department deems
23 necessary.

1 (2) The application must be signed under oath by the sign
2 owner and filed with the district engineer in whose district the
3 sign is to be erected, and shall be accompanied by:

4 (A) the prescribed fee or fees; and

5 (B) if the outdoor advertising is located within the
6 jurisdiction of a municipality with a population of more than
7 1.9 million, a certified copy of the permit for the sign issued
8 by the municipality; and

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

15 Figure: 43 TAC §21.441 (b)(2)(B)

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

16

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

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

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

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

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

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

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

19 (B) in numerals with a minimum height of two inches and
20 minimum width of one inch.

21 (c) Permit renewals.

22 (1) Subject to the terms and location stated in the
23 permit application, a permit issued under this section shall be

1 valid for a period of one year, provided the sign is erected and
2 maintained in accordance with the applicable sections under this
3 undesignated head. The permitted sign must be erected within
4 one year from the date the original permit is issued in order
5 for a sign permit to be eligible for renewal.

6 (2) To renew a permit under this subsection, a permit
7 holder must file with the district engineer a written request in
8 a form prescribed by the department, together with the
9 prescribed renewal fee; and further provided that the sign
10 continues to meet all applicable requirements.

11 (d) Permit transfer.

12 (1) A permit may only be assigned with the written
13 approval of the district engineer.

14 (2) The holder of a permit or permits who desires to
15 transfer one or more permits must file with the district
16 engineer a request in a form prescribed by the department,
17 together with the prescribed transfer fee. The transferor and
18 transferee will each be issued a copy of the approved permit
19 transfer form.

20 (e) Permit fees.

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

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

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

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

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

4

5 §21.551. Prohibited Signs.

6 (a) No sign may be erected within the right-of-way of any
7 rural road nor within what would be the right-of-way if the
8 right-of-way boundary lines were projected across an area of
9 railroad right-of-way, utility right-of-way, or road right-of-
10 way not owned by the state or any political subdivision thereof.

11 (b) No sign shall be erected which contains or is
12 illuminated by any flashing, intermittent, or moving light
13 except a sign giving solely public service information such as
14 time, date, temperature, or weather.

15 (c) No sign shall be so illuminated that it interferes with
16 the effectiveness of, or obscures, an official traffic sign,
17 device, or signal.

18 (d) No sign shall be erected or contain a display which
19 imitates or resembles any official traffic sign, signal, or
20 device.

21 (e) No sign may be erected or maintained upon a tree or
22 painted or drawn upon rocks or other natural features.

23 (f) No sign may be erected that uses any type of screen

1 using animated or scrolling displays even if the message is
2 stationary.

3 (g) No digital sign including a sign, display or device
4 that changes the message or copy on the sign by electronic
5 processes may be erected.