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To: Commercial Sign Regulatory Program

From: Wendy Knox
 Director, Commercial Sign Section

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Subject: Zoned and Unzoned Areas

This guidance is to address zoned and unzoned areas and the ambiguity in the regulation terms.

Commercial Signs must be located in a zoned or unzoned area as defined by 43 TAC §§ 21.166, 21.177, 21.178 and 21.180. The analysis begins with federal law because Tex. Transp. Code Ann. § 391.002(a) provides:

Subject to the availability of state and federal funds, it is the intent of the legislature to comply with the Highway Beautification Act of 1965 (23 U.S.C. Sections 131, 136, 319) to the extent that it is implemented by the United States Congress. This chapter is conditioned on that law.

Thus, federal law provides guidance when interpreting state law as directed by the Texas Legislature since state requirements must comport with federal requirements. 23 C.F.R. § 750.708, “Acceptance of state zoning,” quoting from 23 U.S.C. § 131(d), provides that the federal government will accept state zoning; however, it also provides that a “zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.” Additionally, Texas federal highway funding is predicated on Texas’ compliance with the agreement entered into with the U.S Secretary of Transportation. The agreement states: “this agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right of way of all portions of the Interstate and Primary Systems within the state of Texas in which outdoor advertising signs, displays, and devices, exclusive of official signs and on-premises, erected subsequent to effective date of agreement or regulation may be visible from the main-traveled way of said system.”

Further, the agreement states that in “an unzoned commercial and industrial area shall mean an area in which land use is not zoned under authority of law but which is within a distance of 800 feet of one or more recognized commercial or industrial activities”

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State law comports with federal law. Tex. Transp. Code Ann. § 391.031 establishes a regulatory box 660-feet deep from the nearest edge right of way for the purposes of regulating outdoor advertising. It provides:

- (a) A person commits an offense if the person erects or maintains a commercial sign, or allows a commercial sign to be erected or maintained on property owned by the person:
 - (1) within 660 feet of the nearest edge of a right-of-way if the sign is visible from the main-traveled way of the interstate or primary system;
- (c) The determination of whether an area is to be designated industrial or commercial must be made under criteria established by commission rule *and according to actual land use*.

Considering federal and state law, there must be actual commercial development of the zoned area within the regulatory lane and it must not be incidental to other land uses.

ROW interprets Trans. Code § 391.031(a) to mean that the conditions necessary for permit application approval must occur on the same side of the regulating roadway as the proposed sign location. For example, only businesses on the same side of the regulating roadway may be used to establish a commercial or industrial area.

43 TAC § 21.178 generally accepts local zoning, but has three exceptions that reflect federal limitations and Trans. Code § 391.031. One of these exceptions is § 21.178 (3), which excepts an area that “*has no actual development of the property for commercial or industrial activity, as described in § 21.180, other than specifically sign-related infrastructure*”. Section 21.178 is somewhat ambiguous because of its use of the term “property.” Zoned areas frequently include various parcels of land, and frequently these parcels can have different types of activity. It is common for growing cities to zone larger areas of land “commercial” in anticipation of future development. In this context “property” could be the land leased by the sign owner, a parcel of land within the zoned area or the entire zoned area. ROW interprets “property” considering the above mentioned federal requirements and Trans. Code § 391.031 to require that ROW inspect the property surrounding the proposed location **800’ in each direction on the same side of the roadway**, to determine whether there are “other primary land uses” that are not commercial or industrial in nature. **The methodology for measuring provides for consistency between the “unzoned area” criteria for purposes of permitting commercial signs.**