Description

This minute order adopts amendments to Chapter 21 concerning regulation of signs along interstate and primary highways and the control of signs along rural roads.

Background

Federal and State statutes require the effective control of outdoor advertising on all regulated roads, primary and rural, in the state of Texas. The proposed draft amendments modify two rules concerned with sign height and spacing, and provide a new exemption for noncommercial, on-premises signs of less than 96 square feet.

The commission, by Minute Order 113937 dated May 29, 2014, proposed the amendments. Comments were received and are addressed in Exhibit A.

Criteria

None.

Problem/Condition

The department has identified changes that help make the regulation of signs along roadways more efficient. Rule changes are necessary to implement those changes to the processes and procedures. Also, the department has determined that rules regarding signs along rural roads need to be changed to provide more consistency with the regulation of signs along interstate and primary highways.

Other Comments


Alternate Solutions/Actions

None.
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.146, §21.187, §21.189, and §21.405, all relating to the regulation of signs along highways and roads, and 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 §21.146, §21.187, §21.189, and §21.405 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.
Adopted Preamble

The Texas Department of Transportation (department) adopts amendments to §21.146, §21.187, and §21.189, concerning Regulation of Signs Along Interstate and Primary Highways, and §21.405, concerning Control of Signs Along Rural Roads.

EXPLANATION OF ADOPTED AMENDMENTS

The legislature in Transportation Code, §391.002 declared that it is necessary to regulate the erection and maintenance of outdoor advertising to: (1) promote the health, safety, welfare, morals, convenience, and enjoyment of the traveling public; and (2) protect the public investment in the interstate and primary systems. These amendments to existing rules are responsive to numerous comments received by the department from stakeholders that indicated a need to change or clarify rules in 43 TAC Chapter 21, relating to the regulation of signs along roadways in the state. Where applicable, the rules regarding signs along rural roads were modified to maintain consistency with the regulation of signs along interstate and primary highways. Finally, city ordinances may be more restrictive than the department rules.

Amendments to §21.146, “Exempt Signs,” add an exemption for a sign that is located on the sign owner’s real property, does not provide monetary benefit for the owner or material benefit to a
third-party, and is not an election sign. The department set
the size limit at 96 square feet to address spacing and safety
concerns while accommodating standard material sizes. Section
21.146(c) is amended to clarify that the subsection applies only
to an on-premise sign described by §21.147. Based on comments
the department has amended the rule to allow a sign qualifying
under this exemption to have more than one sign face as long as
no more than one sign face fronts a particular direction of
travel.

Amendments to §21.187, “Spacing of Signs,” clarify spacing
requirements between signs, one of which is located inside and
the other located outside a city’s incorporated limits. There
has been confusion concerning which spacing requirements apply.
New §21.187(d) provides that, if a sign is located inside the
incorporated city limits of a certified city on a freeway
primary road, the spacing limit from a sign located outside of
incorporated city limits on the same side of the road is 1,500
feet. The spacing limit for such a sign from another sign on
the same side of the road that is also inside the incorporated
city limits is 500 feet. New §21.187(e) similarly addresses
signs on non-freeway primary roads with a 750 foot limit if the
other sign is outside of incorporated city limits and a 300 foot
limit if the other sign is inside of the incorporated city
limits. This change makes it clear that if one sign is outside
incorporated limits of a city then the non-city limit spacing requirements apply.

Amendments to §21.189, “Sign Height Restrictions,” address numerous comments received by the department during a previous rule revision that requested a change to its height requirements in Chapter 21, Subchapter I. Draft §21.189(a) proposed a 65 foot height limit based on sign readability studies among other factors. However, based on comments received for this revision the department is not increasing the maximum sign height at this time. The rule does contain changes as to how the sign height will be measured which have been modified to address the change to subsection (a). Section 21.189(e) clarified that the height measurement is from the centerline of the main-traveled way chosen by the sign owner. The rule also clarifies that if the main-traveled way is lower than the ground at the location of the sign structure the sign height will be measured from the ground at the base of the sign structure.

Amendments to §21.405, “Exemptions,” track the changes made in Subchapter I, §21.146, and which are described above.

COMMENTS

Overview: The department received 941 total comments, 919 addressed the draft change in sign height and 22 addressed the
new exemption for non-commercial on-premise signs. The following interested business related groups, sign operators/owners and media consultants, commented positively on the height rule: Acme Partnership, L.P. (representing as well The Sign Company, Inc., Ad Com, L.L.C., SMH DOS Marketing, National Outdoor Advertising, Craig Outdoor, Visible Outdoor, JSL Outdoor); Burkett Outdoor Advertising, L.P.; CBS Outdoor, Inc.; Gilbreath Outdoor Advertising; Hagerman Outdoor Advertising; JGI Outdoor Advertising; Marketing Matters; Metro Outdoor Advertising; Ooh Pitch, Inc. Advertising; Outdoor Advertising Association of Texas; Outdoor Signs; Pearce Outdoor Display; Reagan National Advertising; Rothfielder & Falick, L.L.P; SignAd Outdoor; Southwest Outdoor Advertising. The following interested entities commented negatively on the height rule: City of San Antonio; Economic Development Commission (Gillespie County); Environmental Tree Committee of the Northwest Austin Civic Association; Friends of the Preserve; Greater Houston Partnership; Green Earth Lighting Co.; Hill Country Alliance; Houston Northwest Chamber of Commerce; Lady Bird Wildflower Center; North Houston Association; San Antonio Conservation Society; Scenic Comal County; Scenic Galveston, Inc.; Scenic Texas; Travis County Audubon Society. The department also received approximately 900 comments from the general public requesting the department not increase the maximum sign height.
Additionally, of the 22 comments on the new exemption found in §21.146 and §21.405, 12 individual citizens supported the new exemption and ten citizens opposed all rule changes, including the changes to §21.146 and §21.405.

A large volume of the comments focused on the new 65 foot limit on sign height. These comments have been grouped for response purposes.

Comment: The Liberty Institute proposed that §21.146(12), regarding the new exempt sign, be modified to increase the number of sign faces to two.

Response: The department agrees that more sign faces could reasonably be accommodated and changed the proposed rule so that a sign qualifying for the exemption could have no more than a single sign face fronting a particular direction of travel, e.g., back to back sign faces on a bidirectional road. The rule continues to limit any single sign face to no more than 96 square feet.

Comment: The Liberty Institute proposed adding an additional exception as §21.146(13) that would read: "a sign that displays or expresses information in accordance with the sign owner's
sincerely held religious belief(s)."

Response: The department disagrees with this proposal and will not be including the requested language. The department believes that the broader language of the current draft better meets the requirements of the U.S. and Texas Constitutions as well as the Religious Freedom Restoration Act of 1993 (RFRA) and the Texas Religious Freedom Restoration Act (TRFRA).

Comment: Acme Partnership, Inc. commented that the draft spacing rule was confusing and singled out electronic signs for special treatment in certified cities. It also proposed amending §21.253 so that the department would not permit electronic signs in certified cities.

Response: The department notes that the draft rule merely formalizes department policy to insure that it comports with federal spacing requirements regarding the spacing of signs within a certified city on a highway or freeway, and spacing within municipalities more generally where signs are not on a highway or freeway. The department agrees that §21.187(e) required a minor re-wording to improve clarity, which it accomplished changing “road” to “highway.” Section 21.253 was not proposed for change and therefore, the department may not formally consider this proposal at this time.
Comment: As noted above, the department received over 900 comments on draft §21.189(a), the proposal to increase the allowable sign height to 65 feet. Comments fell into two large groups; generally the industry favored the draft rule and individual citizens and scenic advocacy groups did not. The department received several expert reports. Two reports provided to support the draft rule focused on read time at various speeds and sign heights (International Sign Association (ISA) publication, “The Right Sign for Your Business” and United States Sign Counsel (USSC) publication, “On-Premise Signs Guidelines Standards: Research Based Approach to: Sign Size, Sign Legibility, Sign Height”); these were the same reports that the department had relied on in drafting the rule. One additional report was provided: “Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS),” published by the Federal Highway Administration in 2012. Although this report did not focus on the issue of sign height, it did focus on driver distraction, which was helpful.

Scenic Texas provided two reports to rebut the draft rule and propose a 30 foot limit (Veridian Group review of the ISA and USSC reports and a Veridian Group report supporting a 30 foot limit). These reports focused on the dangers of encouraging a 5 second read time at highway speeds. It noted that department directional signs were lower and used larger fonts to avoid this
Response: Given these myriad and conflicting facts, the department believes that there is insufficient justification to modify the current maximum height requirement and therefore withdraws the proposed change to §21.189(a).

Since the amendment to §21.189(a) has been withdrawn, the remainder of §21.189 had to be modified. Proposed §21.189(e)(1), now §21.189(e), clarifies that the sign height is measured from the centerline of the main-traveled way chosen by the sign owner. The 25 foot minimum ground clearance provided by the proposed §21.189(e)(2) is no longer a practical method of establishing a minimum ground clearance and has been removed. A sentence was added to §21.189(e) to achieve a minimum ground clearance, which provides that in the event that the main-traveled way is below grade, sign height will be measured from the bottom of the base of the sign. This should provide a minimum ground clearance of 18-1/2 feet and, in the case of a below grade level highway, that no sign structure will exceed the 42-1/2 foot height limit.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission)
with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads, and Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.
SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

DIVISION 1. SIGNS

§21.146. Exempt Signs.

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

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

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

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

(4) an official sign that is erected by a public officer, public agency, or political subdivision under the officer's, agency's, or political subdivision's constitutional or statutory authority;

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

(6) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce,
nonprofit museum, or governmental entity, other than an entity

to which paragraph (8) of this subsection applies, that gives
information about the meetings, services, events, or locations
of the entity and that does not exceed an area of 32 square
feet;

(7) a public service sign that:

(A) is located on a school bus stop seating bench or

shelter;

(B) identifies the donor, sponsor, or contributor of

the shelter;

(C) contains a public service message that occupies at

least 50 percent of the area of the sign;

(D) has no content other than that described by

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

(E) is authorized or approved by the law of the entity

that controls the highway involved, including being located at a

place approved by the entity;

(F) has a sign face that does not exceed an area of 32

square feet; and

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

on that seating bench or shelter;

(8) a sign that is erected and maintained by a public

school, a college or university, or a non-profit agricultural
fair, but only if the information presented on the sign is
limited to information about the meetings, services, events, or
on premise activities of the entity, and the total area of the
sign's face facing a particular direction of travel does not
exceed 200 square feet.

(9) a sign that shows only the name of a ranch on which
livestock are raised or a farm on which crops are grown, and the
directions to, telephone number, or internet address of the
ranch or farm, and that has a sign face that does not exceed an
area of 32 square feet;

(10) a sign that:

(A) relates only to a public election;

(B) is located on private property;

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

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

(E) contains no commercial endorsement; [and]

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

(A) is located on the sign owner’s real property;

(B) does not result in any monetary benefit for the owner or material benefit to a third-party;

(C) does not relate to a public election;

(D) has no more than a single sign face fronting a particular direction of travel; and

(E) has no single sign face that exceeds 96 square feet.

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

(c) An on-premise sign that meets the criteria provided by §21.147 of this division (relating to On-premise Sign) cannot be erected earlier than one year before the date that the business for which the sign is erected will open and conduct business.


(a) Permitted signs on the same side of a regulated
freeway, including freeway frontage roads, may not be erected closer than 1,500 feet apart.

(b) For a highway on a non-freeway primary system and outside the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 750 feet apart.

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

(d) A permitted sign that is located within the incorporated boundaries of a certified city on a highway on a freeway primary system may not be closer than:

(1) 1,500 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or

(2) 500 feet to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

(e) A permitted sign that is located within the incorporated boundaries of a municipality on a highway that is on a non-freeway primary system may not be closer than:

(1) 750 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or
the highway and outside the incorporated boundaries of a municipality; or

(2) 300 feet to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

(f) [←(d)→] For the purposes of this section, the space between signs is measured between points along the right of way of the highway perpendicular to the center of the signs.

(g) [←(e)→] For the purposes of this section, a municipality's extraterritorial jurisdiction is not considered to be included within the boundaries of the municipality.

(h) [←(f)→] This section does not apply to directional signs, on-premise signs, or official signs that are exempted from the application of Transportation Code, §391.031.

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

(j) [←(h)→] A permitted sign may not be erected within five feet of the highway right of way line. The distance shall be measured from the end of the sign face nearest the right of way line.

(k) [←(i)→] A permitted sign that is being displaced by a
highway construction project will not be considered in
determining the spacing for a new sign application.

§21.189. Sign Height Restrictions.

(a) Except as provided by subsection (f) of this section, a
sign may not be erected that exceeds an overall height of 42-1/2
feet.

(b) A roof sign that has a solid sign face surface may not
at any point exceed 24 feet above the roof level.

(c) A roof sign that has an open sign face in which the
uniform open area between individual letter or shapes is not
less than 40 percent of the total gross area of the sign face
may not at any point exceed 40 feet above the roof level.

(d) The lowest point of a projecting roof sign or a wall
sign must be at least 14 feet above grade.

(e) For the purposes of this section, height is measured
from [the grade level of] the centerline of the main-traveled
way closest to the sign face, at a point perpendicular to the
sign location. A frontage road of a controlled access highway
or freeway is not considered the main-traveled way for purposes
of this subsection. In the event that the main-traveled way
that is perpendicular to the sign structure is below grade, sign
height will be measured from the base of the sign structure.
(f) The height measurement does not include any renewable energy device such as solar panels or wind turbines that are attached to the sign structure above the sign face to improve the energy efficiency of the sign structure.
SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

§21.405. Exemptions.

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

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

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

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

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

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

(6) a sign erected by a governmental entity;

(7) a sign erected solely for and relating to a public election, but only if:
(A) the sign is on private property;

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

(C) the sign is constructed of lightweight material;

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

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

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

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

(10) a sign that shows only the name of a ranch on which livestock are raised or a farm on which crops are grown and the directions to, telephone number, or internet address of the ranch or farm and that has a sign face that does not exceed an
area of 32 square feet;

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

(12) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce, or nonprofit museum that gives information about the meetings, services, events, or locations of the entity and that does not exceed an area of 32 square feet;

(13) a public service sign that:

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

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

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

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

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

(F) has a sign face that does not exceed an area of 32
square feet; and

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

(14) a sign that is erected and maintained by a public
school, or a college or university, or a non-profit agricultural
fair, but only if the information presented on the sign is
limited to information about the meetings, services, events, or
on premise activities of the entity, and the total area of the
sign's face facing a particular direction of travel does not
exceed 200 square feet; and [–]

(15) a sign that:

(A) is located on the sign owner’s real property;

(B) does not result in any monetary benefit for the
owner or material benefit to a third-party;

(C) does not relate to a public election;

(D) has no more than a single sign face fronting a
particular direction of travel; and

(E) has no single sign face that exceeds 96 square
feet.

(b) An on-premise sign that meets the criteria provided by
$21.442$ of this subchapter (relating to On-premise Sign) cannot
be erected earlier than one year before the date that the
business for which the sign is erected will open and conduct
1 business.