

**FINAL ADOPTION OF AMENDMENTS TO CHAPTER 21
CONCERNING OUTDOOR ADVERTISING**

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

Comments were received from Acme Partnership, L.P. (representing 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., City of San Antonio, Economic Development Commission (Gillespie County), Environmental & Tree Committee of NWACA, Friends of the Preserve, Gilbreath Outdoor Advertising, Greater Houston Partnership, Green Earth Lighting, Hagerman Outdoor Advertising, Hill Country Alliance, Houston Northwest Chamber of Commerce, JGI Outdoor Advertising, Lady Bird Johnson Wildflower Center, Liberty Institute, Marketing Matters, Metro Outdoor Advertising, North Houston Association, Northwest Austin Civic Association, Ooh Pitch, Inc. (Advertising Firm), Outdoor Advertising Association of Texas, Outdoor Signs, Pearce Outdoor Display, Reagan National Advertising, Rothfelder & Falick, L.L.P., San Antonio Conservation Society, Scenic Comal County, Scenic Galveston, Inc., Scenic Texas, SignAd Outdoor, Southwest Outdoor Advertising; and Travis County Audubon.

Alternate Solutions/Actions

None.

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

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.

Submitted and reviewed by:

Recommended by:

Director, Right of Way Division

Executive Director

Minute Number	Date Passed
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1 third-party, and is not an election sign. The department set
2 the size limit at 96 square feet to address spacing and safety
3 concerns while accommodating standard material sizes. Section
4 21.146(c) is amended to clarify that the subsection applies only
5 to an on-premise sign described by §21.147. Based on comments
6 the department has amended the rule to allow a sign qualifying
7 under this exemption to have more than one sign face as long as
8 no more than one sign face fronts a particular direction of
9 travel.

10

11 Amendments to §21.187, "Spacing of Signs," clarify spacing
12 requirements between signs, one of which is located inside and
13 the other located outside a city's incorporated limits. There
14 has been confusion concerning which spacing requirements apply.
15 New §21.187(d) provides that, if a sign is located inside the
16 incorporated city limits of a certified city on a freeway
17 primary road, the spacing limit from a sign located outside of
18 incorporated city limits on the same side of the road is 1,500
19 feet. The spacing limit for such a sign from another sign on
20 the same side of the road that is also inside the incorporated
21 city limits is 500 feet. New §21.187(e) similarly addresses
22 signs on non-freeway primary roads with a 750 foot limit if the
23 other sign is outside of incorporated city limits and a 300 foot
24 limit if the other sign is inside of the incorporated city
25 limits. This change makes it clear that if one sign is outside

1 incorporated limits of a city then the non-city limit spacing
2 requirements apply.

3

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

19

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

22

23 COMMENTS

24 Overview: The department received 941 total comments, 919
25 addressed the draft change in sign height and 22 addressed the

1 new exemption for non-commercial on-premise signs. The
2 following interested business related groups, sign
3 operators/owners and media consultants, commented positively on
4 the height rule: Acme Partnership, L.P. (representing as well
5 The Sign Company, Inc., Ad Com, L.L.C., SMH DOS Marketing,
6 National Outdoor Advertising, Craig Outdoor, Visible Outdoor,
7 JSL Outdoor); Burkett Outdoor Advertising, L.P.; CBS Outdoor,
8 Inc.; Gilbreath Outdoor Advertising; Hagerman Outdoor
9 Advertising; JGI Outdoor Advertising; Marketing Matters; Metro
10 Outdoor Advertising; Ooh Pitch, Inc. Advertising; Outdoor
11 Advertising Association of Texas; Outdoor Signs; Pearce Outdoor
12 Display; Reagan National Advertising; Rothfelder & Falick,
13 L.L.P; SignAd Outdoor; Southwest Outdoor Advertising. The
14 following interested entities commented negatively on the height
15 rule: City of San Antonio; Economic Development Commission
16 (Gillespie County); Environmental Tree Committee of the
17 Northwest Austin Civic Association; Friends of the Preserve;
18 Greater Houston Partnership; Green Earth Lighting Co.; Hill
19 Country Alliance; Houston Northwest Chamber of Commerce; Lady
20 Bird Wildflower Center; North Houston Association; San Antonio
21 Conservation Society; Scenic Comal County; Scenic Galveston,
22 Inc.; Scenic Texas; Travis County Audubon Society. The
23 department also received approximately 900 comments from the
24 general public requesting the department not increase the
25 maximum sign height.

1
2 Additionally, of the 22 comments on the new exemption found in
3 §21.146 and §21.405, 12 individual citizens supported the new
4 exemption and ten citizens opposed all rule changes, including
5 the changes to §21.146 and §21.405.

6
7 A large volume of the comments focused on the new 65 foot limit
8 on sign height. These comments have been grouped for response
9 purposes.

10
11 Comment: The Liberty Institute proposed that §21.146(12),
12 regarding the new exempt sign, be modified to increase the
13 number of sign faces to two.

14
15 Response: The department agrees that more sign faces could
16 reasonably be accommodated and changed the proposed rule so that
17 a sign qualifying for the exemption could have no more than a
18 single sign face fronting a particular direction of travel,
19 e.g., back to back sign faces on a bidirectional road. The rule
20 continues to limit any single sign face to no more than 96
21 square feet.

22
23 Comment: The Liberty Institute proposed adding an additional
24 exception as §21.146(13) that would read: "a sign that displays
25 or expresses information in accordance with the sign owner's

1 sincerely held religious belief(s)."

2

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

9

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

15

16 Response: The department notes that the draft rule merely
17 formalizes department policy to insure that it comports with
18 federal spacing requirements regarding the spacing of signs
19 within a certified city on a highway or freeway, and spacing
20 within municipalities more generally where signs are not on a
21 highway or freeway. The department agrees that §21.187(e)
22 required a minor re-wording to improve clarity, which it
23 accomplished changing "road" to "highway." Section 21.253 was
24 not proposed for change and therefore, the department may not
25 formally consider this proposal at this time.

1
2 Comment: As noted above, the department received over 900
3 comments on draft §21.189(a), the proposal to increase the
4 allowable sign height to 65 feet. Comments fell into two large
5 groups; generally the industry favored the draft rule and
6 individual citizens and scenic advocacy groups did not. The
7 department received several expert reports. Two reports
8 provided to support the draft rule focused on read time at
9 various speeds and sign heights (International Sign Association
10 (ISA) publication, "The Right Sign for Your Business" and United
11 States Sign Counsel (USSC) publication, "On-Premise Signs
12 Guidelines Standards: Research Based Approach to: Sign Size,
13 Sign Legibility, Sign Height"); these were the same reports that
14 the department had relied on in drafting the rule. One
15 additional report was provided: "Driver Visual Behavior in the
16 Presence of Commercial Electronic Variable Message Signs
17 (CEVMS)," published by the Federal Highway Administration in
18 2012. Although this report did not focus on the issue of sign
19 height, it did focus on driver distraction, which was helpful.
20 Scenic Texas provided two reports to rebut the draft rule and
21 propose a 30 foot limit (Veridian Group review of the ISA and
22 USSC reports and a Veridian Group report supporting a 30 foot
23 limit). These reports focused on the dangers of encouraging a 5
24 second read time at highway speeds. It noted that department
25 directional signs were lower and used larger fonts to avoid this

1 problem.

2

3 Response: Given these myriad and conflicting facts, the
4 department believes that there is insufficient justification to
5 modify the current maximum height requirement and therefore
6 withdraws the proposed change to §21.189(a).

7

8 Since the amendment to §21.189(a) has been withdrawn, the
9 remainder of §21.189 had to be modified. Proposed
10 §21.189(e)(1), now §21.189(e), clarifies that the sign height is
11 measured from the centerline of the main-traveled way chosen by
12 the sign owner. The 25 foot minimum ground clearance provided
13 by the proposed §21.189(e)(2) is no longer a practical method of
14 establishing a minimum ground clearance and has been removed. A
15 sentence was added to §21.189(e) to achieve a minimum ground
16 clearance, which provides that in the event that the main-
17 traveled way is below grade, sign height will be measured from
18 the bottom of the base of the sign. This should provide a
19 minimum ground clearance of 18-1/2 feet and, in the case of a
20 below grade level highway, that no sign structure will exceed
21 the 42-1/2 foot height limit.

22

23 STATUTORY AUTHORITY

24 The amendments are adopted under Transportation Code, §201.101,
25 which provides the Texas Transportation Commission (commission)

1 with the authority to establish rules for the conduct of the
2 work of the department, and more specifically, Transportation
3 Code, §391.032, which provides authority to establish rules to
4 regulate the orderly and effective display of outdoor
5 advertising on primary roads, and Transportation Code, §394.004,
6 which provides the commission with the authority to establish
7 rules to regulate the erection and maintenance of signs on rural
8 roads.

9

10 CROSS REFERENCE TO STATUTE

11 Transportation Code, Chapters 391 and 394.

1 SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND

2 PRIMARY HIGHWAYS

3 DIVISION 1. SIGNS

4 §21.146. Exempt Signs.

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

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

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

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

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

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

22 (6) a sign of a nonprofit service club, charitable
23 association, religious organization, chamber of commerce,

1 nonprofit museum, or governmental entity, other than an entity
2 to which paragraph (8) of this subsection applies, that gives
3 information about the meetings, services, events, or locations
4 of the entity and that does not exceed an area of 32 square
5 feet;

6 (7) a public service sign that:

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

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

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

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

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

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

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

22 (8) a sign that is erected and maintained by a public
23 school, a college or university, or a non-profit agricultural

1 fair, but only if the information presented on the sign is
2 limited to information about the meetings, services, events, or
3 on premise activities of the entity, and the total area of the
4 sign's face facing a particular direction of travel does not
5 exceed 200 square feet.

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

11 (10) a sign that:

12 (A) relates only to a public election;

13 (B) is located on private property;

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

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

19 (E) contains no commercial endorsement; [~~and~~]

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

1 and [-]

2 (12) a sign that:

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

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

6 (C) does not relate to a public election;

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

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

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

17 (c) An on-premise sign that meets the criteria provided by
18 §21.147 of this division (relating to On-premise Sign) cannot be
19 erected earlier than one year before the date that the business
20 for which the sign is erected will open and conduct business.

21

22 §21.187. Spacing of Signs.

23 (a) Permitted signs on the same side of a regulated

1 freeway, including freeway frontage roads, may not be erected
2 closer than 1,500 feet apart.

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

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

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

14 (1) 1,500 feet to another sign that is on the same side
15 of the highway and outside the incorporated boundaries of a
16 municipality; or

17 (2) 500 feet to another sign that is on the same side of
18 the highway and inside the incorporated boundaries of a
19 municipality.

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

23 (1) 750 feet to another sign that is on the same side of

1 the highway and outside the incorporated boundaries of a
2 municipality; or

3 (2) 300 feet to another sign that is on the same side of
4 the highway and inside the incorporated boundaries of a
5 municipality.

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

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

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

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

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

23 (k) [~~i~~] A permitted sign that is being displaced by a

1 highway construction project will not be considered in
2 determining the spacing for a new sign application.

3

4 §21.189. Sign Height Restrictions.

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

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

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

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

16 (e) For the purposes of this section, height is measured
17 from [~~the grade level of~~] the centerline of the main-traveled
18 way closest to the sign face, at a point perpendicular to the
19 sign location. A frontage road of a controlled access highway
20 or freeway is not considered the main-traveled way for purposes
21 of this subsection. In the event that the main-traveled way
22 that is perpendicular to the sign structure is below grade, sign
23 height will be measured from the base of the sign structure.

1 (f) The height measurement does not include any renewable
2 energy device such as solar panels or wind turbines that are
3 attached to the sign structure above the sign face to improve
4 the energy efficiency of the sign structure.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.405. Exemptions.

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

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

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

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

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

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

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

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

1 (A) the sign is on private property;

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

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

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

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

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

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

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

1 area of 32 square feet;

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

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

11 (13) a public service sign that:

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

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

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

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

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

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

1 square feet; and

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

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

11 (15) a sign that:

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

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

15 (C) does not relate to a public election;

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

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

20 (b) An on-premise sign that meets the criteria provided by
21 §21.442 of this subchapter (relating to On-premise Sign) cannot
22 be erected earlier than one year before the date that the
23 business for which the sign is erected will open and conduct

1 business.