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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Right of Way Division
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

___ Content based on previous emergency rule filed on _____
___ Content is identical to the emergency rule

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
1680-02-03	Control of Outdoor Advertising
Rule Number	**Rule Title**
1680-02-03-.01	Preface
1680-02-03-.02	Definitions
1680-02-03-.03	Criteria for the erection and control of outdoor advertising
1680-02-03-.04	Control of non-conforming and grandfathered non-conforming advertising devices along the interstate and primary system of highways
1680-02-03-.05	Directional signs

1680-02-03-.06	On-premise signs
1680-02-03-.07	Removal of abandoned signs
1680-02-03-.08	Vegetation control
1680-02-03-.09	Appendix

Chapter Number	**Chapter Title**
1680-06-03	Control of Outdoor Advertising
Rule Number	**Rule Title**
1680-06-03-.01	Preface
1680-06-03-.02	Definitions
1680-06-03-.03	Criteria for the erection and control of outdoor advertising devices
1680-06-03-.04	Permits, renewals, and administrative hearings
1680-06-03-.05	Control of nonconforming outdoor advertising devices
1680-06-03-.06	On-premises devices
1680-06-03-.07	Removal of abandoned devices
1680-06-03-.08	Vegetation control
1680-06-03-.09	Appendix

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

Chapter 1680-02-03 is amended by deleting the heading "Rules of the Tennessee Department of Transportation Maintenance Division" and substituting instead "Rules of the Tennessee Department of Transportation Right of Way Division" and is further amended by changing the chapter's control number from 1680-02-03 to 1680-06-03.

Chapter 1680-02-03 is amended by deleting the current table of contents and substituting the following table of contents:

1680-06-03-.01	Preface
1680-06-03-.02	Definitions
1680-06-03-.03	Criteria for the erection and control of outdoor advertising devices
1680-06-03-.04	Permits, renewals, and administrative hearings
1680-06-03-.05	Control of nonconforming outdoor advertising devices
1680-06-03-.06	On-premises devices
1680-06-03-.07	Removal of abandoned devices
1680-06-03-.08	Vegetation control
1680-06-03-.09	Appendix

Rule 1680-02-03-.01 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.01 Preface.

The purpose of these regulations is to implement and enforce the Outdoor Advertising Control Act of 2020 (effective June 22, 2020) to provide for effective control of outdoor advertising devices within the adjacent area of highways on the interstate and primary highway systems within the State of Tennessee in accordance with and as required by 23 U.S.C. § 131 and 23 CFR Part 750, subject to any limitations imposed by the United States Constitution as determined in the final judgment of a tribunal having jurisdiction over the matter. The Outdoor Advertising Control Act of 2020 and these regulations are subject to any applicable requirements of the Tennessee Constitution.

Authority: T.C.A. § 54-21-111.

Rule 1680-02-03-.02 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.02 Definitions.

(1) "Abandoned outdoor advertising device" means any regulated outdoor advertising device that for a twelve-month period falls into one or more of the following classifications:

(a) A device in substantial need of repair, which means that, in the case of wooden sign structures, sixty percent (60%) or more of the upright poles or supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support; provided, however, that a nonconforming device in a condition meeting these criteria will immediately be considered destroyed rather than abandoned;

(b) A device whose sign face remains damaged fifty percent (50%) or more, or in the case of a device with multiple sign faces, each sign face that remains damaged fifty percent (50%) or more;

(c) A device with a blank sign face (i.e., no advertising message), or in the case of a device with multiple sign faces, each sign face that remains blank; or

(d) A device that has been removed and has not been reconstructed in its permitted location; provided, however, that a nonconforming device that has been removed will immediately be considered destroyed rather than abandoned.

(e) The twelve-month period for establishing abandonment under subparagraphs (a) – (d) may be waived or suspended during a period of involuntary discontinuance, such as the closing of a highway for repair in front of the sign; provided, however, that the termination of the permit holder's lease, easement, or other right or permission for access from the landowner shall not be grounds for waiver of the twelve-month period for establishing abandonment.

(See illustrations in Rule 1680-06-03-.09, Appendix.)

(2) "Adjacent area" means that area within six hundred sixty feet (660') along the nearest edge of the right-of-way of interstate and primary highways and visible from the main traveled way of the interstate or primary highways. (See Rule 1680-06-03-.03(1) for additional explanation regarding standards for measurement of the adjacent area.)

(3) "Agreement" means the agreement entered into, pursuant to T.C.A. § 54-21-113, between the Department and the United States Department of Transportation, Federal Highway Administration, regarding the definition of unzoned commercial and industrial areas, and size, lighting, and spacing of certain outdoor advertising devices. (Copies of the original agreement, dated November 11, 1971, and the supplemental agreement, dated October 16, 1984, are included in Rule 1680-06-03-.09, Appendix.)

(4) "Changeable message sign" means an outdoor advertising device that displays a series of messages at intervals by means of digital display or mechanical rotating panels.

(5) "Commissioner" means the Commissioner of the Tennessee Department of Transportation or the Commissioner's designee.

(6) "Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future payment, or forbearance of debt.

(7) "Comprehensive zoning" means a complete approach to land use within an entire political subdivision. For example, the mere placing of the label "Zoned Commercial or Industrial" as a land use classification for taxation purposes does not constitute comprehensive zoning. Comprehensive zoning requires the establishment of a complete set of regulations to govern the land use within the entire political subdivision.

(8) "Conforming" means an outdoor advertising device that was permitted under and conforms to the zoning, size, lighting, and spacing criteria established in accordance with either the current supplemental agreement entered into between the Department and Federal Highway Administration on October 16, 1984, or the original agreement entered into on November 11, 1971, as authorized in § 54-21-113. Any permitted outdoor advertising device that continues to conform to either the current supplemental agreement or the original agreement and conditions provided in § 54-21-113 is considered conforming.

(9) "Controlled access highway" means a divided highway with full control of access, including grade-separated interchanges rather than at-grade intersections, and with no permitted driveway entrances or exits from the main traveled way.

(10) "Customary maintenance" means maintenance of a nonconforming outdoor advertising device, which may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(11) "Department" means the Tennessee Department of Transportation.

(12) "Destroyed" means, with respect to a nonconforming outdoor advertising device, that, in the case of wooden sign structures, sixty percent (60%) or more of the upright poles or supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(13) "Digital display" means a type of changeable message sign that displays a series of messages at intervals through the electronic coding of lights or light emitting diodes or any other means that does not use or require mechanical rotating panels.

(14) "Directional sign" means a type of official sign that identifies a site, attraction, or activity and directional information useful to a traveler in locating the site, attraction, or activity, including mileage, route numbers, or exit numbers.

(15) "Double-faced, back-to-back, or V-type sign" means those configurations or multiple outdoor advertising device structures, as those terms are commonly understood. In no instance shall these terms include two or more devices that are not physically contiguous or connected by the same structure or cross-bracing or, in the case of back-to-back or V-type signs, located more than fifteen feet (15') apart at their nearest points. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(16) "Erect" means to construct, build, raise, assemble, place, affix, attain, create, paint, draw, or in any other way bring into being or establish, but does not apply to changes of copy treatment on an existing outdoor advertising device.

(17) "Facility" means a commercial or industrial facility, or other facility open to public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas; provided, that activity conducted in a temporary structure or a structure operated only on a seasonal basis may be considered a facility for the purpose of allowing an on-premises device to be located on the same property, but the device is only allowed on a temporary basis during the period the facility is actually conducting activity.

(18) "Information center" means an area or site established and maintained at a safety rest area for the purpose of informing the public of places of interest within this State and providing other information the Commissioner may consider desirable.

(19) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within this State, as officially designated, or as may hereafter be so designated, by the Commissioner, and approved by the Secretary of Transportation of the United States, pursuant to Title 23 of the United States Code.

(20) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. "Main traveled way" does not include such facilities as frontage roads, turning roadways, or parking areas.

(21) "Nonconforming" means an outdoor advertising device that was lawfully erected but does not conform to the zoning, size, lighting, or spacing criteria established by and in accordance with either the current supplemental agreement entered into between the Department and the Federal Highway Administration on October 16, 1984, or in accordance with the original agreement entered into on November 11, 1971, as authorized in T.C.A. § 54-21-113. Any outdoor advertising device that continues to conform to either the terms of the current supplemental agreement or the original agreement as provided in T.C.A. § 54-21-113 shall not be considered nonconforming.

(22) "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or non-profit historical societies may be considered official signs.

(23) "On-premises device" means a sign:

(a) That is located within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the facility (as defined above) that owns or operates the sign or within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located; and

(b) For which compensation is not being received and not intended to be received from a third party or parties for the placement of a message on the sign.

(24) "Original conforming device" means a device that was legally permitted on or after April 4, 1972, in accordance with the original agreement entered into between the Department and

the Federal Highway Administration on November 11, 1971, as authorized in T.C.A. § 54-21-113(a), and which remains in compliance with the zoning, size, lighting and spacing criteria established in the original agreement.

(25) "Outdoor advertising device":

(a) Means a sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign; and

(b) Does not include a sign that is an on-premises device or other type of sign exempt from regulation under Title 54, Chapter 21, of the Tennessee Code; and

(c) Does include any other sign the Department is required to regulate to provide for the effective control of outdoor advertising in accordance with 23 U.S.C. § 131 and as further provided in Title 54, Chapter 21, of the Tennessee Code.

(26) "Person" means and includes an individual, a partnership, an association, a corporation, or other entity.

(27) "Primary system" means that portion of connected main highways, located within this State, as officially designated, or as may be hereafter be so designated by the Commissioner, and approved by the Secretary of Transportation of the United States, pursuant to Title 23 of the United States Code, including highways designated as part of the national highway system and highways formerly designated as part of the federal-aid primary system.

(28) "Public park" means any publicly owned land which is designated or used as a park, recreation area, wildlife or waterfowl refuge, or historic site.

(29) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

(30) "Scenic area" or "historic scenic area" means any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction thereof and includes interests in lands which have been acquired for the restoration, preservation, and enhancement of scenic beauty or historical resources.

(31) "Sign" means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform and any part of the advertising or informative contents of which is visible from any place on the main traveled way of an interstate system or primary system; provided, however, that a building, structure, or object having a primary function at its location other than to advertise or inform will not be considered a "sign" solely because words or figures, etc., are displayed on its exterior surface, unless the owner or operator is earning compensation directly or indirectly from a third party or parties for the placement of any message on the exterior of the building, structure, or object, and provided that this exception shall not apply to any separate sign structure or sign face that is attached to the building, structure, or object.

(32) "Sign face" means the entire area of a sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face, within which any advertising embellishment or informative content is actually displayed. (See illustration in Rule 1680-06-03-.09, Appendix.)

(33) "Stacked device" means an outdoor advertising device in which two (2) or more displays facing in the same direction of travel along the highway are stacked one (1) above the other in multiple sign faces separated by airspace and regulated together under one permit, as provided in T.C.A. § 54-21-118. (See illustration in Rule 1680-06-03-.09, Appendix.)

(34) "State system" means that portion of highways located within this State, as officially designated, or as may hereafter be designated, as state highways by the Commissioner.

(35) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(36) "Unzoned commercial or industrial area":

(a) Means an area on which there is located one (1) or more permanent structures within which a commercial or industrial business is actively conducted, and which is equipped with all customary utilities facilities and open to the public regularly or regularly used by the employees of the business as their principle work station, or which, due to the nature of the business, is equipped, staffed, and accessible to the public as necessary, and includes the area along the highway extending outward six hundred feet (600') from and beyond the edge of such activity in each direction and a corresponding zone directly across a primary highway that is not also a controlled access highway when the area is not primarily residential in character or a:

1. Public park;

2. Public playground;

3. Public recreational area;

4. Public forest, wildlife, or waterfowl refuge;

5. Historic scenic area; or

6. Cemetery;

(b) Does not include land across the highway from a commercial or industrial activity when the highway is an interstate or controlled access primary highway;

(c) Must be measured from the outer edges of the regularly used buildings, parking lots, storage, processing, or landscaped areas of the commercial or industrial activity, not from the property lines of the activity; and

(d) Does not include the following activities conducted within the area, when considered for purposes of outdoor advertising:

1. Outdoor advertising structures;

2. Agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

3. Transient or temporary activities (i.e., activities that are not conducted, at least in part, within one or more permanent structures, or activities that are not conducted on a regular schedule for at least five (5) days per week over a continuous period of not less than ten (10) months within a calendar year);

4. Activities not visible from the main traveled way;

5. Activities more than six hundred and sixty feet (660') from the nearest edge of the right-of-way;

6. Activities conducted in a building primarily used as a residence; and

7. Railroad tracks and minor sidings.

(e) The six hundred feet (600') shall be measured along the edge of the pavement nearest the commercial activity and from points that are perpendicular to the edge of pavement of the traveled way. (See illustration in Rule 1680-06-03-.09, Appendix.)

(37) "Utility signs" means warning signs, notices, or markers that are customarily erected and maintained for operational and public safety purposes by publicly or privately owned utilities, railroads, ferries, airports, or other entities that provide utility or transportation services.

(38) "Visible" means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

(39) "Voidable" means a status in which a permit is in violation of at least one requirement of these rules or governing statutes and eligible to be rendered void and the outdoor advertising device removed by a final administrative action.

(40) "Zoned commercial or zoned industrial" means those areas in a comprehensively zoned political subdivision set aside for commercial or industrial use pursuant to the state or local zoning regulations, but shall not include strip zoning, spot zoning, or variances granted by the local political subdivision strictly for outdoor advertising.

Authority: T.C.A. §§ 54-21-102, 54-21-103, 54-21-111, and 54-21-118.

Rule 1680-02-03-.03 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.03 Criteria for the erection and control of outdoor advertising devices.

(1) Restrictions on outdoor advertising devices within the adjacent area of highways on the interstate and primary systems.

Outdoor advertising devices erected or maintained within the adjacent area of a highway on the interstate or primary systems and visible from the main traveled way of the highway are subject to the restrictions established in T.C.A. § 54-21-103 and as further provided in this rule.

(a) Measurement of the adjacent area.

1. In general, the measurement of the adjacent area shall begin at the nearest edge of the highway right-of-way property line and continue outward six hundred and sixty feet (660'); provided, however, that:

2. Where the highway right-of-way width extends outward more than one hundred feet (100') from the main traveled way of an interstate or other controlled access highway at an interchange with another highway that is not a controlled access highway, the measurement of the adjacent area beyond the interchange will begin at a line that is one hundred feet (100') outward from, and parallel to, the outside edge line of the through lanes on the main traveled way, excluding

shoulders, exit ramps, entrance ramps, and acceleration or deceleration lanes. (See illustration in Rule 1680-06-03-.09, Appendix.)

(b) Criteria for applying regulations based on visibility from the main traveled way.

The following criteria will be used to determine whether an outdoor advertising device located within the adjacent area of a highway on the interstate or primary system (regulated highway) should be subject to the restrictions established in this rule because the device has the purpose or effect of directing advertising messages to the main traveled way of the regulated highway:

1. In general, an outdoor advertising device within the adjacent area of a regulated highway is subject to the restrictions established in this rule if fifty percent (50%) or more of the sign face is visible from the main traveled way of the regulated highway.

2. Notwithstanding that fifty percent (50%) or more of the sign face is visible from the main traveled way of a regulated highway, the outdoor advertising device will not be subject to the restrictions applicable to the regulated highway, or it may be subject to restrictions applicable to a different regulated highway, if any of the following factors, or combination of factors, indicate that the device does not have the purpose or effect of directing advertising messages to the main traveled way of the regulated highway:

   (i) The proximate location of the device to another intersecting or parallel highway within the adjacent area of the regulated highway;

   (ii) The size of the sign face in relation to the distance of the device from the regulated highway or other highway;

   (iii) The orientation of the sign face by height or angle in relation to the regulated highway or other highway;

   (iv) The duration of time the sign face is visible from the main traveled way to the driver or passenger of a vehicle traveling at the maximum speed on the regulated highway;

   (v) The use of illumination or a digital display to attract attention to the sign face from the main traveled way of the regulated highway or other highway;

   (vi) The presence of obstructions or seasonal vegetation that blocks visibility of the sign face for at least six (6) months of the year; or

   (vii) Other potentially relevant factors.

3. If application of the factors in part 2 above indicates that the device does not have the purpose or effect of directing advertising messages to the main traveled way of the regulated highway, the device will not be subject to the restrictions applicable to that regulated highway, but will be subject to the restrictions applicable to another regulated highway on the interstate or primary system if the device has the purpose or effect of directing advertising messages to the other regulated highway.

4. If the outdoor advertising device has the purpose or effect of directing advertising messages to two or more regulated highways, the more stringent restrictions applicable to either regulated highway will apply.

(c) Zoning restrictions.

1. Outdoor advertising devices must be located in areas zoned commercial or zoned industrial or in areas which qualify as unzoned commercial or industrial areas. (See definitions of "unzoned commercial or industrial area" and "zoned commercial or zoned industrial" in Rule 1680-06-03-.02.)

2. The following types of signs are not restricted by the zoning criteria:

(i) Official signs and notices, including directional signs, authorized or required by law;

(ii) On-premises devices (see Rule 1680-06-03-.06 for detailed description of on-premises devices);

(iii) Signs other than outdoor advertising devices that:

(I) Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area; and

(II) Do not contain any flashing, intermittent, or moving lights;

(iv) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(v) Utility signs.

(d) Size restrictions.

1. The maximum total gross area for a sign face on an outdoor advertising device, or the total area of the sign faces per horizontal facing on a stacked device or double-faced sign, shall be seven hundred seventy-five square feet (775 sq. ft.), with a maximum height of thirty feet (30') or maximum length of sixty feet (60'); provided, however, that a 60'x30' sign face is not allowed. All measurements of the sign face shall be inclusive of any border and trim, and any advertising embellishments as provided in part 3 below, but exclusive of ornamental base or apron supports and other structural members.

2. In counties having a population greater than 250,000 the Department will accept the particular county's standard size, but in no instance shall this standard size, determined by the local governing body, exceed 1,200 square feet, inclusive of any border and trim and any advertising embellishments but exclusive of ornamental base or apron supports and other standard members.

3. The area of each sign face shall be measured by the smallest square, rectangle, triangle, or circle, or combination thereof, that will encompass the entire area of the sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content

is actually displayed. In the case of stacked devices or double-faced signs, the total area of the sign faces per horizontal facing will be determined by combining the area of each sign face, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, including the border and trim and the area of any advertising embellishment outside the border and trim but excluding any airspace between the sign faces. (See illustrations in Rule 1680-06-03-.09, Appendix.)

4. An outdoor advertising device may contain one sign face per horizontal facing and may be back-to-back or V-type, or in the case of a stacked device or double-faced sign the device may contain two (2) or more sign faces per horizontal facing, but the total area of any sign face, or combination of sign faces, may not exceed seven hundred seventy-five square feet (775 sq. ft.) except as outlined above for counties with a population of 250,000 or greater. In accordance with T.C.A. § 54-21-118, no permits shall be issued for any new stacked devices after July 1, 2001. However, a stacked device legally permitted and erected on or before July 1, 2001, may remain in its location, subject to the annual renewal of the permit, or the holder of the permit may move a lawfully permitted stacked device to a new location if the location is otherwise eligible for a permit.

5. See illustrations in Rule 1680-06-03-.09, Appendix, to further describe the size requirements.

6. The following types of signs are not subject to size restrictions:

   (i) Official signs and notices, including directional signs;

   (ii) On-premises devices;

   (iii) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

   (iv) Utility signs.

7. Signs located along a designated scenic highway or parkway are subject to additional size restrictions as provided in T.C.A. §§ 54-17-108 – 54-17-109 and §§ 54-17-205 – 54-17-206.

(e) Lighting restrictions.

1. Outdoor advertising devices that contain, include, have attached, or are illuminated by any flashing, intermittent or moving light, or lights which involve moving parts are prohibited, except changeable message signs with a digital display, as authorized in T.C.A. § 54-21-119 and subparagraph (h) below, or a small digital display, not to exceed one hundred square feet (100 sq. ft.), within a larger non-digital sign face.

2. Outdoor advertising devices that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of any interstate or primary highway and are of such intensity or brilliance as to cause glare or to impair vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle, are prohibited.

3. No outdoor advertising device shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(f) Spacing restrictions.

1. Interstate Highway Systems and Controlled Access Primary Highways.

(i) No two outdoor advertising devices shall be spaced less than one thousand feet (1,000') apart on the same side of a highway on the interstate system or a controlled access highway on the primary system; provided, however, that outdoor advertising devices may be spaced closer together where they are separated by buildings or other obstructions, so that only one (1) outdoor advertising device is visible from the main traveled way of the highway at any one (1) time. The obstruction must be continuous in character; an obstruction caused by a temporary structure or seasonal vegetation will not qualify. (See illustration in Rule 1680-06-03-.09, Appendix.).

(ii) Outside the corporate limits of a municipality, or in a county having the metropolitan form of government, outside the urban services district, no outdoor advertising device may be located adjacent to or within one thousand feet (1,000') of an interchange or intersection at-grade, measured along the interstate or controlled access highway on the primary system from the nearest point of the beginning or ending of pavement widening at the exit or entrance to the main traveled way. Provided, however, that if the boundaries of the urban services district in a county having the metropolitan form of government, overlap the corporate limits of a municipality, located within any such county, then the corporate limits shall be the prevailing factor for determining spacing of structures, rather than the urban services district boundaries. (See illustrations in Rule 1680-06-03-.09, Appendix.)

2. Primary Highway System (Non-Controlled Access).

(i) Outside the corporate limits of a municipality, or in the case of a county having the metropolitan form of government, outside the urban services district, no two outdoor advertising devices shall be spaced less than five hundred feet (500') apart on the same side of a highway on the primary system that is not a controlled access highway. Provided, however, that if the boundaries of the urban services district in a county having the metropolitan form of government, overlap the corporate limits of a municipality located within any such county, then the corporate limits shall be the prevailing factor for determining spacing of structures, rather than the urban services district boundaries.

(ii) Within the corporate limits of a municipality, or in the case of a county having the metropolitan form of government, within the urban services district boundaries, no two outdoor advertising devices shall be spaced less than one hundred feet (100') apart on the same side of a highway on the primary system that is not a controlled access highway.

3. Explanatory Notes.

With respect to spacing requirements on both the interstate and primary systems:

(i) The following types of signs are not subject to spacing requirements, nor shall measurements be made from them for purposes of determining compliance with spacing requirements:

(I) Official signs and notices, including directional signs;

(II) On-premises devices;

(III) Signs other than outdoor advertising devices that:

I. Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area; and

II. Do not contain any flashing, intermittent, or moving lights;

(IV) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(V) Utility signs.

(ii) The minimum distance between outdoor advertising devices shall be measured along the nearest edge of pavement to the outdoor advertising device between points determined by a right angle from the edge of pavement directly opposite and transecting the leading pole of the device along each side of the highway. (See illustrations in Rule 1680-06-03-.09, Appendix.)

4. Signs Located Along Scenic Highways or Parkways.

Signs located along a designated scenic highway or parkway are subject to additional spacing restrictions as provided in T.C.A. §§ 54-17-108 – 54-17-109 and §§ 54-17-205 – 54-17-206.

(g) Control of Original Conforming Devices.

1. An original conforming device, as defined in Rule 1680-06-03-.02, may remain in place or may be rebuilt, reconstructed, or upgraded, subject to the following restrictions:

(i) A valid permit must be maintained for the device;

(ii) The permit holder must notify and obtain authorization from the Department's Outdoor Advertising Office before rebuilding, reconstructing, or upgrading the device; and

(iii) The device must remain in place or be rebuilt in the exact previous location.

2. A violation of one or more of the restrictions established in part 1 above will render the permit voidable.

3. The Department shall use its best efforts to review and respond to a request to rebuild, reconstruct, or upgrade an original conforming device within no greater than thirty (30) days after the request is received. If a response cannot be provided within thirty (30) days after receipt of the request, the Department shall contact the requester prior to the expiration of the thirty (30) days to

provide an explanation of the reasons why additional time is needed to review the request.

4. If an original conforming device is removed without prior approval from the Department to rebuild, reconstruct, or upgrade the device, the permit as an original conforming device is voidable and no new permit shall be issued for another outdoor advertising device as an original conforming device at that location.

(h) Changeable Message Signs with a Digital Display.

1. Changeable message signs with a digital display that meet all other requirements pursuant to Title 54, Chapter 21, of the Tennessee Code and these rules are permissible subject to the following restrictions:

(i) The message display time must remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;

(ii) Video, continuous scrolling messages, and animation are prohibited; and

(iii) The minimum spacing of the changeable message signs with a digital display facing the same direction of travel on the same side of the interstate system or controlled access highways on the primary system is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, within a larger non-digital sign face is not subject to the minimum spacing requirement established in this subpart (iii), or to any application for a specific digital display permit or permit addendum, or to any fee for a permit addendum as established in § 54-21-104(b).

2. Brightness standards.

(i) All changeable message signs installed on or after July 1, 2014, must come equipped with a light-sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(ii) The brightness standards and methods for measuring the brightness of a digital display are set forth in T.C.A. § 54-21-119(h), which is incorporated herein by reference, and as described in Rule 1680-06-03-.09, Appendix.

(2) Restrictions on outdoor advertising devices adjacent to interstate and primary highways beyond six hundred sixty feet (660') of the nearest edge of the right-of-way outside of urban areas.

(a) Control of outdoor advertising devices extends to outdoor advertising devices located beyond six hundred sixty feet (660') of the nearest edge of the right-of-way of highways on the interstate and primary systems outside of urban areas erected with the purpose of their message being read from the main traveled way of such systems. Such outdoor advertising devices are prohibited, regardless of whether located in commercial or industrial areas, unless they are of a class or type allowed within six hundred sixty feet (660') of the nearest edge of the right-of-way of such systems outside of commercial or industrial areas. To determine whether an outdoor advertising device has been erected for the purpose of having its message read from the main traveled way of a highway on the interstate or primary

system, the Department will apply the factors identified in Rule 1680-06-03-.03(1)(b).

(b) Explanatory Note.

1. As defined in Title 23, United States Code, Section 101, the term "urban area" means an urbanized area, or in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand (5,000) or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary of the United States Department of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census.

2. The term "urbanized area" means an area with a population of fifty thousand (50,000) or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

(3) Landmark Signs.

(a) Signs lawfully in existence on October 22, 1965, determined by the Commissioner, subject to the concurrence of the Secretary of Transportation of the United States, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this section, are not required to be removed. Landmark signs are exempt from permit and fee requirements.

(b) Explanatory Note.

Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in the size, lighting, or message content will terminate its exempt status.

Authority: T.C.A. §§ 54-21-102, 54-21-103, 54-21-108, 54-21-111, 54-21-113, 54-21-118, and 54-21-119.

Rule 1680-02-03-.04 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.04 Permits, renewals, and administrative hearings.

(1) Application Requirements for New Outdoor Advertising Device Permits.

(a) No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained, any outdoor advertising device visible from the main traveled way of the interstate system or primary system, and subject to regulation under Title 54, Chapter 21 of the Tennessee Code, without first obtaining from the Department a permit and tag authorizing the same. An outdoor advertising device that is erected prior to obtaining the required permit shall be considered illegal and subject to removal at the expense of the owner as provided in T.C.A. § 54-21-105. The Department shall not require any additional permit under this subparagraph for an outdoor advertising device lawfully permitted, erected, and in

operation under the Billboard Regulation and Control Act of 1972 prior to the effective date of the Outdoor Advertising Control Act of 2020.

(b) The outdoor advertising device permit application form and related forms may be viewed on the Department's Outdoor Advertising Office website, which can be found at https://www.tn.gov/content/tn/tdot/right-of-way-division/outdooradvertising.html. An original permit application form and related forms may be obtained from the Department's Outdoor Advertising Office at the following address:

Tennessee Department of Transportation
Outdoor Advertising Office
Suite 400, James K. Polk Bldg.
505 Deaderick Street
Nashville, TN 37243
Telephone No. 615-741-2877
Email: TDOT.ODA@tn.gov

(c) A complete original application for an outdoor advertising device permit must be hand delivered or mailed to the Department's Outdoor Advertising Office in Nashville at the address indicated above. No faxed or emailed application materials will be accepted.

(d) In addition to a completed application form, a complete application for an outdoor advertising device permit shall also include the following; provided, however, that an outdoor advertising device that was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation is exempt from the requirements established in parts 2 and 3 of this subparagraph (d), as provided in T.C.A. § 54-21-104:

1. Payment of the application fee by check or money order made payable to the Tennessee Department of Transportation and in the amount established in T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Outdoor Advertising Office in Nashville);

2. A map or scaled drawing that indicates and labels the following:

   (i) The property lines of the real property within which the outdoor advertising device is to be located;

   (ii) The location of the regulated highway(s) on the interstate or primary system along which the outdoor advertising device permit is requested and any other public roads adjacent to the property;

   (iii) The location and property lines of the State's highway right-of-way;

   (iv) The location of the proposed outdoor advertising device within the property; and

   (v) The public road, driveway, or other means by which the applicant can obtain access to the real property where the proposed outdoor advertising device is to be located without using direct ingress and egress across or using any part of the state highway right-of-way.

3. A signed and notarized affidavit from the property owner or permanent easement owner (on a form provided by the Outdoor Advertising Office), as follows:

(i) If the applicant is the property owner, the affidavit shall:

(I) Certify the applicant's ownership interest in the property; and

(II) Attach a copy of the applicant's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a printout of this document. The name of the property owner on the application must match the property owner's name on the affidavit exactly as the name on the property record card; provided, however, that the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date.

(ii) If the applicant is the owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:

(I) Certify the applicant's easement interest in the property;

(II) Attach a copy of the deed granting the applicant a permanent easement right to construct and operate an outdoor advertising device on the property. The name of the easement owner on the application must match the easement owner's name on the affidavit exactly as the easement owner's name on the deed granting the easement; and

(III) Attach a copy of the most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a printout of this document. Alternatively, the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date.

(iii) If the applicant is not the property owner or owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:

(I) Certify that the property owner or owner of the permanent easement has given the applicant permission to construct and operate the proposed outdoor advertising device at the proposed location, or that a lessee or other person authorized by the property owner or owner of the permanent easement has given such permission, in which case the applicant shall provide an affidavit jointly signed by the property owner or owner of the permanent easement and the lessee or other person attesting that such permission has been given; and

(II) Attach a copy of the property owner's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a printout of this document. In addition, if applicable, attach a copy of the deed granting the permanent easement right to construct and operate an outdoor advertising device on the property. If the joint affidavit is signed by the property owner, the name of the property owner on the

application must match the property owner's name on the affidavit exactly as the name on the property record card; provided, however, that the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date. If the joint affidavit is signed by the owner of the permanent easement, the name of the easement owner on the application must match the easement owner's name on the affidavit exactly as the easement owner's name on the deed granting the permanent easement.

(e) The applicant shall mark the proposed location of the outdoor advertising device in the field by placing a stake in the ground, the top of which shall be not less than four (4) feet above ground level, at the precise location on the owner's property where the device is proposed to be located; provided, however, that if the proposed location of the device is in a paved area, the precise location shall be marked on the pavement in paint. The stake or mark shall identify the applicant. An outdoor advertising device that was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation is exempt from the requirements of this subparagraph (e), as provided in T.C.A. § 54-21-104.

(2) Processing of Applications.

(a) No application for an outdoor advertising device permit will be considered unless the completed application form and all other documents required by these rules have been filed in the Department's Outdoor Advertising Office in Nashville. It is the applicant's responsibility to verify that all information and documents required for a complete application are accurate and complete.

(b) If the application is incomplete or defective on its face, the Department shall notify the applicant regarding the application's incomplete or defective status no later than fifteen (15) days after receipt of the filed application. The notice shall indicate the information or documentation that is needed to complete or correct the application. The notice shall give the applicant a deadline of fifteen (15) days after the date the written notice is sent, or to the end of the next regular business day if the fifteenth (15th) day falls on a weekend or official state holiday, within which to complete or correct the filed application. If the applicant fails to complete or correct the application by the established deadline, the application shall be considered incomplete and shall be returned without further processing, as provided below. The applicant shall be responsible for verifying that the entire application package is accurate and complete, notwithstanding any action or omission by the Department, and the applicant shall not be given a second opportunity to complete or correct the application. This shall not be construed to prevent the applicant from submitting a subsequent application for a permit at the same location.

(c) All documents included with an incomplete application shall be returned to the applicant without being processed, and the application fee shall be returned or refunded. If the incomplete application is accompanied by any other documents pertaining to the permitting of any outdoor advertising device, including without limitation a request to cancel another outdoor advertising device permit or the cancellation of a previous request for hearing, the entire package will be returned to the applicant with the incomplete application without being processed.

(d) If an application is withdrawn or returned for any reason, and the applicant chooses to resubmit the application, the subsequently filed application, if complete, shall be

processed as a new application as of the date it is received and shall be given a new application number.

(e) The return of an incomplete application, and any accompanying materials, without processing in accordance with these rules is not a final administrative action subject to appeal or an administrative hearing.

(f) Complete applications will be considered on a first come, first served basis and processed in order of time stamped at the Department's Outdoor Advertising Office upon receipt.

(g) The Department will use its best efforts to process an application, in accordance with these rules, within no greater than sixty (60) days after receipt of a complete application. If a decision either to issue or deny the permit cannot be made within sixty (60) days, the Department will contact the applicant prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to process the application.

(h) Upon determining that an application is complete, the Outdoor Advertising Office will forward the complete application to Department personnel assigned to conduct a field inspection.

(i) Upon receiving a complete application, the assigned Department personnel will initiate a field inspection of the proposed location for the outdoor advertising device.

(j) If the Department finds that the actual proposed location is not marked on the pavement or staked in the field by a stake as required in these rules, the Outdoor Advertising Office will be notified, and the application will be denied. Prior to denying an application, the Department will attempt to contact the applicant so that the defect may be cured.

(k) If the proposed location is marked or staked as required, the Department will complete the field inspection. If the field inspection indicates that the proposed outdoor advertising device location would fail to meet the minimum spacing required by law due to a conflict with the location of an earlier filed application, or with the location of an existing permit that the Department has deemed voidable under these rules, the Outdoor Advertising Office will be notified that a minimum spacing conflict exists.

(l) Because applications must be considered on a first come, first served basis, the Department shall proceed as follows when a minimum spacing conflict exists:

1. If an application is submitted for a proposed location that has a minimum spacing conflict with the location proposed in an earlier filed application, the Department shall first determine whether to grant or deny the permit requested in the earlier filed application and proceed as follows:

(i) If the earlier filed application is granted, the Department shall deny the later filed application.

(ii) If the earlier filed application is denied, the later filed application will not be processed until such time as the earlier applicant has an opportunity to request a hearing on the denial and then as follows:

(I) If the earlier applicant makes a timely request for a hearing, the later filed application, including the application fee and all

documents accompanying the application shall be returned to the applicant without processing.

(II) If the earlier applicant does not make a timely request for hearing, the later filed application will be processed and either granted or denied in accordance with these rules.

2. If an application is submitted for a proposed location that has a minimum spacing conflict with the location of an existing outdoor advertising device having a permit that the Department has deemed voidable under these rules, but which remains in a pending status because the holder of the permit still has the opportunity to undertake remedial action or to request a hearing, or because the holder of the permit has requested a hearing but the case has not been finally adjudicated, the application for the new outdoor advertising device permit, including the application fee and all documents accompanying the application, shall be returned to the applicant without processing.

(m) If the proposed location is properly marked on the pavement or staked in the field and there does not appear to be any minimum spacing conflict with a pending application or permit, the Department will complete the field inspection in consideration of the zoning, spacing and other requirements for permitting an outdoor advertising device under these rules.

(n) Apart from the failure to meet any other requirement of these rules, if it is determined by the Department that the applicant is unable to obtain access to the proposed location to erect and maintain an outdoor advertising device except by direct ingress and egress across the state highway right of way, or by breaching the State's right of access control, if any, or by using some part of the State's right-of-way, then the application shall be denied.

(o) Upon completing the field inspection, a written field inspection report will be submitted to the Outdoor Advertising Office.

(p) The Outdoor Advertising Office will review the field inspection report to verify that it is complete and accurate. If not, the report will be returned for additional field inspection work. If the report is complete and accurate, the Department shall make the determination to grant or deny the requested outdoor advertising permit.

(q) If the Department grants the permit, a serially numbered permit and metal tag will be issued to the applicant. The permit and metal tag shall be issued only for the specific outdoor advertising sign face identified on the approved application and only for the precise location footprint as marked on the pavement or as staked in the field. Under no circumstances shall a permit and/or tag be used for or moved to any other location.

(r) If the Department decides to deny the permit, the Department will send a copy of the disapproved application to the applicant with a letter explaining the reason for the permit denial. The application fee shall not be refunded. The applicant shall have a right to appeal the denial of the permit as provided Rule 1680-06-03-.04(8) below.

(s) If an outdoor advertising device was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation, the Department shall process the application as provided in T.C.A. § 54-21-104(b)(2).

1. The application must be accompanied by payment of the application fee set in T.C.A. § 54-21-104(b)(2)(C).

2. The Department shall not deny a permit for an existing outdoor advertising device under this subparagraph (s) solely because the outdoor advertising device does not meet the size, lighting, spacing, or zoning criteria that are required for new outdoor advertising devices under current law and regulations.

3. An application for a permit may be denied on other grounds under this subparagraph (s) only as otherwise provided in current law or regulations, including as follows:

   (i) The outdoor advertising device is located within or encroaches upon state highway right-of-way;

   (ii) There is no access to the outdoor advertising device for maintenance or operational purposes except by direct access from state highway right-of-way or across the state's access control limits;

   (iii) The applicant for the permit is subject to enforcement action under T.C.A. § 54-21-105(c); or

   (iv) Issuance of the permit would violate federal law.

4. If the Department determines that the permit should be denied on any of the grounds provided in part 3 above, the Department will proceed as follows:

   (i) Before denying the permit, the Department shall notify the applicant in writing of the violation or circumstance that prevents issuance of the permit. The notice shall also give the applicant a reasonable amount of time to undertake such action, if any, that would cure the violation. At a minimum, the notice shall state that the applicant has forty-five (45) days within which to complete the remedial action or to request an administrative hearing to contest the proposed denial.

   (ii) Upon written request of the applicant, and for good cause shown, the Department may extend the time for completing the remedial action for up to an additional one hundred fifty (150) days, which may be made subject to the condition that the applicant remove all advertising content from the device.

   (iii) If the applicant cures the violation, the Department shall issue the permit, but if the applicant fails to cure the violation, the Department shall deny the permit.

5. Any permit that is issued under this subparagraph (s) must indicate whether the outdoor advertising device is characterized and regulated as a conforming or nonconforming device under these rules based upon the conditions and laws in effect on the date of the Department's field inspection. The Department shall notify the applicant in writing of the reason or reasons for characterizing a device as nonconforming.

6. The applicant has the right to appeal the Department's decision in accordance with this rule and the applicable provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, of the Tennessee Code.

(3) Application Requirements for Changeable Message Signs with a Digital Display.

(a) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. The Department shall not require any additional permit under this subparagraph for an outdoor advertising device with a digital display lawfully permitted, erected, and in operation under the Billboard Regulation and Control Act of 1972 prior to the effective date of the Outdoor Advertising Control Act of 2020.

(b) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location as provided in T.C.A. § 54-21-104(b)(3) and this paragraph (3). An outdoor advertising device authorized by a valid permit from the Department that was effective on September 10, 2019, and has been upgraded to a changeable message sign with a digital display between September 11, 2019, and June 22, 2020, the effective date of the Outdoor Advertising Control Act of 2020, is required to apply for an addendum to the permit in accordance with this subparagraph. The Department shall charge an application fee of seventy dollars ($70.00) for the addendum to the permit and shall process the application in the same manner as provided for an original permit under subparagraph (2)(s).

(c) The Commissioner shall under no circumstances permit or authorize any person to erect, operate, use, or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.

(d) Notwithstanding any other law to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subparagraphs (a) or (b) has up to, but no more than, twelve (12) months after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign; provided, however, that prior to the expiration of this twelve-month period, and upon making application to the Commissioner and paying an additional permit fee in the amount of two hundred dollars ($200), the permit holder may obtain an additional twelve (12) months within which to erect and begin displaying an outdoor advertising message on the changeable message sign. This additional two-hundred-dollar ($200) fee is separate from any annual permit renewal fee required under § 54-21-104. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within the required time, or as extended, the permit or addendum to the permit will be revoked and the changeable message sign with the digital display must be removed by the applicant or subject to removal by the Commissioner as provided in § 54- 21-105.

(4) Requirements for Construction of a Permitted Outdoor Advertising Device.

(a) If a permit is issued, the permit holder must erect the support structure and attach the sign face at the approved location within one hundred and eighty (180) days from the date the permit is issued. A copy of the approved application must be on-site in the possession of the permit holder, or any person acting on behalf of the permit holder during the construction of the device. If the device is not fully constructed within the one hundred eighty (180) day period, the permit shall be voidable.

(b) The dimensions of the sign face on the outdoor advertising device, as built, must conform to the dimensions of the proposed sign face as described in the approved

application; provided, however, that upon giving prior written notice thereof to the Department's Outdoor Advertising Office the permittee may construct a sign face with dimensions that are smaller than the dimensions described in the approved application so long as the constructed sign face is at least twenty square feet (20 sq. ft.) in total area and both the sign face and the tag affixed to the device will be visible to the main traveled way of the highway. If the permit holder does not construct the sign face in accordance with the approved application or as modified in accordance with this subparagraph, the permit shall be voidable.

(c) The tag must be affixed to the outdoor advertising device and visible from the main traveled way of the highway on which the outdoor advertising device is permitted. If the tag is not attached and visible as required, the outdoor advertising permit for that device shall be voidable; provided, however, if after construction of the device the growth of vegetation on the highway right-of-way prevents visibility of the tag from the main traveled way of the highway, the Department may waive this visibility requirement.

(d) Neither the permit holder nor any person acting on behalf of the permit holder shall obtain access to the site of the outdoor advertising device by direct ingress and egress across the state highway right-of-way, nor shall the permit holder or any such person use any part of the State's highway right-of-way, to erect or maintain the outdoor advertising device. No equipment used by the permit holder or any such person to construct or maintain the outdoor advertising device shall encroach upon the right-of-way. Removal of any access control fence or any breach of the Department's right of access control is strictly prohibited. If any of these provisions are violated, the permit shall be voidable.

(e) It is the responsibility of the permit holder to locate the state highway right-of-way property line. No outdoor advertising device shall under any circumstances be allowed on the State's highway right-of-way. Any outdoor advertising device located partly or entirely on the State's highway right-of-way shall be considered an encroachment subject to removal at the owner's expense under the provisions of T.C.A. § 54-5-136.

(5) Determining the Location of an Outdoor Advertising Device.

(a) For the purposes of issuing permits and regulating outdoor advertising devices in accordance with the Title 54, Chapter 21, of the Tennessee Code and these rules, the location of a permitted outdoor advertising device is determined by the location of the supporting monopole, or by the location of the supporting pole nearest to the highway in the case of a device erected on multiple supporting poles.

(b) Notwithstanding subparagraph (a), if a permitted multiple-pole device may be lawfully reconstructed, the replacement of the supporting poles with a monopole is not considered a change of location requiring a new permit if:

1. The permittee gives advance notice to, and receives the prior approval of, the Department before reconstructing the outdoor advertising device;

2. The monopole is erected within the line segment defined by the previous supporting poles; and

3. The location of the monopole meets applicable spacing requirements.

(6) Voiding of Permits.

(a) The Commissioner has the authority to void an outdoor advertising device permit under the following conditions:

1. Any negligent or intentional misrepresentation of material fact on any application submitted pursuant to these rules; or

2. Any violation of one or more of the requirements for a permit under Federal or State law or these rules.

(b) In the event the Department deems a permit voidable under these rules, the Department shall give notice either by certified mail or other form of return receipt mail or by personal service to the permit holder; provided, however, that notice shall be deemed effective if the permit holder refuses to accept delivery of the certified mail or other return receipt mail. Such notice shall identify the alleged violation that renders the permit voidable; specify the remedial action, if any, which is required to correct the violation; and advise that failure to complete the remedial action within forty-five (45) days or to request a hearing to contest the alleged violation within forty-five (45) days will result in the permit becoming void, the right to a hearing waived, and the outdoor advertising device subject to removal and other enforcement action under T.C.A. § 54-21-105.

(c) Once a permit is issued for a location, the Department will not void a permit based on a change in property ownership or the lack of consent of the property owner for the permit owner to operate and maintain an outdoor advertising device at this location unless the permit holder requests that the permit be voided or there is a court order stating, in effect, that the permit holder has no legal right to operate or maintain an outdoor advertising device at that location.

(7) Investigations.

(a) If the Department has reason to believe that a sign is being operated, in whole or part, as an outdoor advertising device without first obtaining a permit as required under T.C.A. § 54-21-104, the Department may issue an investigative request to the owner or operator of the sign, the owner of the property, or any other person for the purpose of obtaining relevant documents or information to determine whether the sign is being operated as an outdoor advertising device.

(b) If, after being served with an investigative request by the Department under subparagraph (a), the person provides the requested documents or information and the Department determines that the sign is being operated as an outdoor advertising device in violation of T.C.A. §§ 54-21-103 and 54-21-104, the Department shall issue a written order to the owner or operator of the outdoor advertising device explaining the basis for determining that the sign is an outdoor advertising device and directing the owner or operator of the device to remedy the violation by applying for the applicable outdoor advertising device permit, or by removing the unlawful device, as appropriate, by the date set forth in the order, which shall be no less than sixty (60) days after the date of the order.

(c) The person may appeal the Department's order under subparagraph (b) by filing a written notice of appeal with the Department within thirty (30) days of the date on which the order is issued. If an appeal is timely filed with the Department, the Department shall initiate a contested case proceeding under the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, to hear the person's appeal.

(d) If a person fails to comply with the Department's investigative request under subparagraph (a), or if the Department reasonably believes the documents or information provided are incomplete or inaccurate, the Department may initiate a contested case proceeding under the Uniform Administrative Procedures Act to compel the production of relevant documents or information and to determine whether the outdoor advertising device is being operated in violation of §§ 54-21-103 and 54-21-104 and therefore subject to enforcement action under § 54-21-105.

(8) Administrative Hearings.

(a) If an application for an outdoor advertising device permit is processed by the Department and subsequently denied, or if the permit for an existing device has been deemed voidable under these rules, the applicant shall have forty-five (45) days from the date of the receipt of the denial letter or notice to request, in writing, an administrative hearing concerning the grounds upon which the permit was denied or is deemed to be voidable. The request for hearing shall state the specific facts and provisions of law upon which the applicant relies to contest the denial or voiding of the permit.

(b) If an administrative hearing is requested in the allotted time to contest the denial of an application for a permit, the application shall remain in a pending status until the matter has been finally adjudicated by a final administrative order, a final court order upon judicial review, or by agreement of the parties.

(c) If an administrative hearing is requested in the allotted time to contest the grounds upon which the Department has deemed a permit to be voidable, the permit shall not be eligible for renewal and shall be placed in a pending status until the matter has been finally adjudicated by a final administrative order, a final court order upon judicial review, or by agreement of the parties. If the final order or agreement results in reinstatement of the permit, the permit holder shall be responsible for payment of all annual permit renewal back fees from the date of the hearing request. After the back fees are paid, the permit will be returned to active status and shall be eligible for renewal.

(d) A hearing on the denial or proposed voiding of an outdoor advertising device permit shall be conducted as provided in the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, et seq., and the Rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-04-01.

(e) The return of an application, and any accompanying materials, without processing in accordance with these rules is not a final administrative action subject to appeal or an administrative hearing. Accordingly, the Department shall not initiate or accept any request for an administrative hearing based on the return of an application or any accompanying materials without processing.

(f) The Department has no authority to resolve any dispute between the permit holder and the current property owner concerning the terms of the permit holder's lease or any other claim the permit holder may have to remain on the property. Accordingly, the Department shall not initiate or accept any request for an administrative hearing to resolve any such dispute.

(9) Replacement Tags for Outdoor Advertising Devices.

Replacements for stolen, vandalized, lost, or illegible tags may be obtained from the Department's Outdoor Advertising Office. Requests for replacement tags must be made in writing and accompanied by a check or money order, payable to the Tennessee Department

of Transportation, for the amount of the replacement tag fee as provided in T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Outdoor Advertising Office in Nashville).

(10) Annual Renewal of Permits for Outdoor Advertising Devices.

(a) Permits shall be renewed annually between November 1st and December 31st.

(b) For each permit that is to be renewed, the permit holder shall return the renewal form together with payment of the annual renewal fee by check or money order made payable to the Tennessee Department of Transportation and in the amount provided in T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Department's Outdoor Advertising Office in Nashville).

(c) The permit holder shall notify the Department's Outdoor Advertising Office of any change in the permit holder's mailing address.

(d) Permits and tags shall be voidable on January 1 of each year if not renewed by December 31 of the prior year.

(e) In the event that a permit holder fails to renew a permit as provided in these rules, the permit will not be considered void until the Department has given the permit holder notice of the failure to renew and the opportunity to correct the unlawfulness, as provided in T.C.A. § 54-21-105(b). The Department must send the notice of the failure to renew within sixty (60) days after the failure to renew. The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within one hundred twenty (120) days of receipt of the notice. If a permit holder fails to renew the permit within this one hundred twenty (120) day notice period, then the permit is void and the outdoor advertising device is considered unlawful and subject to removal as further provided in T.C.A. § 54-21-105. The notice given by the Department must include the requirements for renewal and consequences of failure to renew as provided in this subparagraph (e).

(11) Transfer of Outdoor Advertising Device Permits.

(a) If a permit holder chooses to transfer a permit to another company or individual, the transfer request must be in writing and signed by the current permit holder and sent to the Department's Outdoor Advertising Office. It must include a check or money order payable to the Tennessee Department of Transportation for the amount of the transfer fee as provided in T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Outdoor Advertising Office in Nashville).

(b) Permits and tags are issued for a particular sign face and outdoor advertising device location and may not be moved to or used for any other location.

Authority: T.C.A. §§ 54-21-104, 54-21-105, and 54-21-111.

Rule 1680-02-03-.05 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.05 Control of nonconforming outdoor advertising devices.

(1) Those outdoor advertising devices legally in existence on April 4, 1972, shall be entitled to remain in place and in use until compensation for removal has been made.

(2) Nonconforming devices as defined in Rule 1680-06-03-.02 may remain in place, subject to restrictions set forth herein, until such time as they may be purchased.

(3) Restrictions on nonconforming devices are as follows:

(a) Maintenance beyond customary maintenance will not be allowed. Customary maintenance is defined in Rule 1680-06-03-.02. Customary maintenance may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period.

(b) Under no circumstances may the location be changed.

(c) Extension or changing height above ground level or enlargement of the sign face will not be allowed.

(d) Lighting cannot be added to an unilluminated sign.

(e) Reflective material cannot be added to a non-reflective sign.

(4) A lawfully permitted nonconforming device that has been destroyed or damaged beyond what may be repaired through customary maintenance may be rebuilt or repaired beyond customary maintenance only if all of the following conditions are satisfied:

(a) The destruction of or damage to the device must have been caused by vandalism or some other criminal or tortious acts, excluding any negligent or intentional acts of the permit holder or any party acting by permission of, with the knowledge of, or in concert with the permit holder and/or sign owner.

(b) No device may be rebuilt and/or repaired without the prior written approval of the Department.

(c) The current holder of the permit or sign owner, if different, must submit a written request for approval to the Department's Outdoor Advertising Office, which written request must provide, at a minimum:

1. Proof of the date and cause of the destruction of and/or damage to the device, including a copy of the police report made with respect to the vandalism or other criminal or tortious act causing such destruction or damage; and

2. A general description of the manner in which it is proposed to rebuild and/or repair the device.

(d) No post, pole or other support structure, or any component of the device other than the sign face or stringers, will be approved for replacement or repair without proof that such post, pole, support structure, or other component of the device was destroyed or damaged by an act of vandalism or some other criminal or tortious act. The replacement or repair of destroyed components of the device under this subparagraph is separate and distinct from, and does not operate as limitation of, the provision for customary maintenance of such devices.

(e) The device must be rebuilt and/or repaired in such manner that it replicates the original device, including specifically as follows:

1. The rebuilt and/or repaired device must remain or be rebuilt in the exact same location as the original device; and

2. The rebuilt and/or repaired device must have the same height, size, and dimensions as the original device; and

3. Each post, pole, other support structure, or other component of the device, including the sign face and stringers, must be rebuilt and/or repaired with materials that replicate the materials used to construct that same component in the original device (e.g., wood for wood, steel for steel, etc.); and

4. No component may be added to the rebuilt device that was not permitted under the original device, including no lighting if the original sign was not illuminated, no reflective material if the original sign was not reflectorized, and no changeable message technology on the sign face if not included on the original sign.

(f) The rebuilding and/or repair of the device must be completed within twelve (12) months after the date on which the original device was destroyed and/or damaged or the device will be treated as an abandoned outdoor advertising device. Permittee must contact the Department's Outdoor Advertising Office for field inspection once rebuilding or repair has been completed.

(5) Except as provided in paragraph (4) of this rule above, any previously permitted nonconforming device that is destroyed by natural disaster, natural attrition, or any other cause whatsoever shall not continue to be permitted under this Chapter.

(6) See illustrations at Rule 1680-06-03-.09, Appendix, for further descriptions of damaged nonconforming devices that are qualified for customary maintenance and destroyed nonconforming devices that are subject to removal.

Authority: T.C.A. §§ 54-21-102, 54-21-111, and 54-21-120.

Rule 1680-02-03-.06 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.06 On-premises devices.

(1) General.

(a) On-premises devices are not subject to the zoning, size, lighting, or spacing regulations set out in Rule 1680-06-03.-03 or to the permitting requirements established in Rule 1680-06-03-.04. However, on-premises devices located along a designated scenic highway or parkway are subject to additional size and spacing restrictions as provided in T.C.A. §§ 54-17-108 – 109 and §§ 54-17-205 – 54-17-206.

(b) To qualify as an on-premises device, a sign must meet the following requirements, as provided in the definitions set out in Rule 1680-06-03-.02, and as further detailed in paragraphs (2) and (3), below:

1. The sign must be located:

(i) Within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the facility that owns or operates the sign; or

(ii) Within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located; and, provided that:

(iii) For the purpose of applying this rule, the facility on or next to which an on-premises device is located must be:

(I) A commercial or industrial facility, or other facility open to the public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas, except that

(II) An activity conducted in a temporary structure or a structure operated only on a seasonal basis may be considered a facility for the purpose of allowing an on-premises device to be located on the same property, but the device is only allowed on a temporary basis during the period the facility is actually conducting activity; and

2. The owner or operator of the sign or the facility must not be receiving or intend to receive compensation from a third party or parties for the placement of a message or messages on the sign.

(2) Premises Test.

To qualify as an on-premises device, a sign must be on, or within fifty feet (50') of, the premises of the facility (i.e., the building or defined physical space, which may include a structure other than a building, together with any adjacent parking area), where the activities of the facility are conducted. The following criteria shall be used in determining whether a device is located on the premises of the facility:

(a) The premises on which an activity is conducted is determined by physical facts rather than property lines. Generally, it is defined as the land occupied by the buildings or other physical uses essential to the activity, including such areas as are arranged and designed to be used in connection with such buildings or uses.

(b) The following will not be considered a part of the premises on which the activity is conducted, and any signs located on such land will be considered "off-premises" signs:

1. Any land that is not used as an integral part of the principal activity. This includes, but is not limited to, land that is separated from the activity by a roadway, highway, or other obstructions and not used to conduct the activity or land consisting of extensive undeveloped highway frontage not actually used by the facility to conduct the activity even though the land might be under the same ownership;

2. Any land that is used for, or devoted to, a separate purpose unrelated to the principal activity. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, a residence, or farmstead uses or other than commercial or industrial uses having no relationship to the service station activity would not be part of the premises of the service station, even though under the same ownership; or

3. Any land that is:

(i) At some distance from the principal activity, and

(ii) In closer proximity to the highway than the principal activity, and

(iii) Developed or used only in the area of the sign site or between the sign site and the principal activity, and

(iv) Occupied solely by structures or uses which are only incidental to the principal activity, and which serve no reasonable or integrated purpose related to the activity other than to attempt to qualify the land for on-premises signing purposes. Generally, these will be facilities such as picnic, playground, or camping areas, dog kennels, golf driving ranges, skeet ranges, common or private roadways or easements, walking paths, fences, and sign maintenance sheds.

(c) Narrow Strips.

Where the sign site is located at or near the end of a narrow strip contiguous to the activity, the sign site shall not be considered part of the premises of the facility. A narrow strip shall include any configurations of land that cannot be put to any reasonable use related to the activity other than for signing purposes. In no event shall a sign site be considered part of the premises on which the activity is conducted if it is located upon a narrow strip of land:

1. Which is non-building land, such as swamp land, marsh land, or other wet land, or

2. Which is a common or private roadway, or

3. Held by easement or other lesser interest than the premises where the activity is located.

Note: On-premises devices may extend up to fifty feet (50') feet from the principal activity as set forth above unless the area extends across a roadway.

(d) See illustration in Rule 1680-06-03-.09, Appendix, for further description of the location requirements for an on-premises device.

(3) Business of Outdoor Advertising.

(a) A sign shall not be considered an on-premises device, notwithstanding the location of the sign, and shall be considered an outdoor advertising device, if it is operated to earn compensation directly or indirectly from a third party or parties for the placement of a message on the sign.

(b) In the case of a property on which two (2) or more facilities are located, a sign located at the entrance of the property, as provided in subpart (1)(b)1(ii) of this rule, will not be considered an outdoor advertising device operated to earn compensation directly or indirectly from a third party for the placement of a message on the sign so long as:

1. The owner or operator of the sign does not receive compensation for the display of a message from any person other than a facility that is located on the same property; and

2. The facility located on the property does not receive compensation from any other person for the display of a message on the sign located on the same property;

Authority: T.C.A. §§ 54-21-102, 54-21-103, and 54-21-111.

Rule 1680-02-03-.07 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.07 Removal of abandoned devices.

(1) The permit for an abandoned outdoor advertising device shall be voidable after a twelve-month period of abandonment has elapsed, as follows:

(a) The permit for a device, or permits for a device with multiple sign faces, that for a period of twelve (12) months remains in substantial need of repair, which in the case of a wooden sign structure means that sixty percent (60%) or more of the upright supports of the sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or in the case of a metal sign structure that normal repair practices would call for replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support, is voidable after the device has remained in that condition for a period of twelve (12) months; provided, however, that a nonconforming device in a condition meeting these criteria will immediately be considered destroyed rather than abandoned and the permit for the device will be void;

(b) The permit for a device whose sign face remains damaged fifty percent (50%) or more, or in the case of a device with multiple sign faces, the permit for each sign face that remains damaged fifty percent (50%) or more, is voidable after the sign face has remained in that condition for a period of twelve (12) months;

(c) The permit for a device that has a blank sign face (i.e., no advertising message) for a period of twelve (12) months, or in the case of a device with multiple sign faces, the permit for each sign face that remains blank, is voidable after the sign face has remained in that condition for a period of twelve (12) months; or

(d) The permit for a device that has been removed from its permitted location is voidable if it has not been reconstructed in its permitted location within twelve (12) months after its removal; provided, however, that a nonconforming device that has been removed will immediately be considered destroyed rather than abandoned and the permit for the device will be void.

(2) The twelve-month period for establishing abandonment under subparagraphs (1)(a) – (d) may be waived or suspended during a period of involuntary discontinuance, such as the closing of a highway for repair in front of the sign; provided, however, that the termination of the permit holder's lease, easement, or other right or permission for access from the landowner shall not be grounds for waiver of the twelve-month period for establishing abandonment.

(3) An abandoned outdoor advertising device or sign face that no longer has an outdoor advertising permit is subject to removal or other enforcement action as provided in T.C.A. § 54-21-105.

(4) Before initiating an enforcement action based on abandonment, the Department will first send a written notice to the permit holder identifying the condition of the device

that would constitute abandonment and the date on which the twelve-month period for establishing abandonment will begin. If the permit holder believes that a defense to the condition of abandonment exists, the permit holder shall notify the Department in writing, and the Department shall respond in writing. If the Department does not accept the defense and the condition of abandonment remains for twelve (12) months, the Department will send a written notice to the permit holder, as provided in Rule 1680-06-03-.04(6)(b), stating that the permit is voidable based on abandonment. The permittee shall have forty-five (45) days within which to appeal the decision, as provided in Rule 1680-06-03-.04(6)(b).

(5) See illustration in Rule 1680-06-03-.09, Appendix, for examples of abandoned devices.

Authority: T.C.A. §§ 54-21-102, 54-21-104, 54-21-105 and 54-21-111.

Rule 1680-02-03-.08 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.08 Vegetation control.

(1) Definitions.

(a) For the purpose of T.C.A. § 54-21-116, "generally visible" or "general visibility" is defined as capable of being visible to occupants of vehicles using the main traveled way for some of the distance between the point where such capacity occurs and the location perpendicular to the outdoor advertising device.

(b) For the purpose of T.C.A. § 54-21-116, "clearly visible" or "clear visibility" is defined as capable of advising of the message.

(2) Administration.

(a) T.C.A. § 54-21-116 is construed as being in contemplation of an increase in the amount or size of vegetation within those adjacent portions of the right-of-way from which the face of an outdoor advertising device is capable of being visible to occupants of vehicles using the main traveled way existing on the date of erection of the outdoor advertising device, whereby such visibility becomes less than general visibility.

(b) When applications are made for vegetation control permits, the area of general visibility on the date of erection will be reviewed to determine whether such an increase in the amount and size thereof has occurred since the date of erection to warrant the issuance of a permit to attain clear visibility for an adjacent area of up to five hundred feet (500') within the area of general visibility. Vegetation that, on the date of erection of the outdoor advertising device, blocked the view of the outdoor advertising device, in whole or in any part, for a distance not to exceed five hundred yards (500 yds.), to occupants of vehicles using the main traveled ways, is not eligible for removal under a vegetation control permit.

(c) The vegetation control permit will authorize the permittee to remove, block cut, or trim vegetation located on the right-of-way adjacent to the outdoor advertising device, and replace the vegetation as directed, whenever the vegetation prevents clear visibility for a distance not to exceed five hundred yards (500 yds.) to occupants of vehicles using the main traveled ways of the controlled systems. The maximum area to be controlled shall not exceed five hundred feet (500').

(d) Each vegetation control permit will be subject, at a minimum, to the following

conditions:

1. Permittee shall obtain any permits or approvals required by any regulatory agency having jurisdiction under federal, state, or local law over any work to be performed on the highway right-of-way, including without limitation any permits required under water quality regulations.

2. Normally, the permittee will be authorized to remove or control vegetation only through the use of mechanical methods; provided, however, that beginning on March 1, 2024, the Department may authorize the use of herbicides in specific circumstances, subject to strict conditions, including but not limited to the requirements that the use of any herbicide may be allowed only between March 1 and October 15 of each year and must be performed by a person who has a valid current pesticide applicator certification in the applicable service category for right-of-way pest control and has, or works under the direct supervision of a person who has, a valid current pest control operator license from the Tennessee Department of Agriculture.

3. Permittee shall notify any utility company that may be affected by the work, as required by law, including without limitation compliance with the Underground Utility Damage Prevention Act, T.C.A. § 65-31-101, et seq, if applicable.

4. Permittee shall comply with the provisions of the Manual on Uniform Traffic Control Devices, as adopted in TDOT Rule Chapter 1680-03-01, applicable to work being performed adjacent to highways.

5. Parking on or working from the shoulder of the highway may be authorized only by special written permission from the Department. If authorization has been granted, a Shoulder Permit shall be attached to Vegetation Control Permit. Permittee's work forces must be present at all times any equipment is located on the shoulder.

6. There shall be no overnight parking of equipment on highway right-of-way, and no equipment shall be parked on the shoulder of the highway when the permittee's work forces are not present.

7. If the highway right-of-way is access-controlled, the permittee shall not obtain access to the right-of-way across the access control boundary, and the permittee shall not cut, remove, or damage any access control fence; provided, however, that the applicant may request the Department to permit a break in access control to obtain access to the right-of-way. If the applicant requests a break in access control, the applicant shall include as a part of the vegetation control permit application a written proposal, with photographs, showing why the break in access control is needed, how the applicant will obtain access to the property outside the access control fence, and the proposed extent and duration of the break in access control. The applicant will not be granted a break in access control for the purpose of obtaining access to the property outside the access control fence. The permittee will be required to provide a temporary barrier to protect access control when not on the job site and will be required to restore the access control fence to the Department's specifications promptly upon completion of the vegetation control work. In the event that the permittee, or the permittee's agent or representative, does unauthorized damage to a fence or any other public property in the work area, the permittee shall immediately repair or replace the same at the permittee's expense.

8. Any drainage tiles, culverts, or other drainage infrastructure must remain free

and clear of cut brush, pulverized debris, or disturbed soil.

9. If any work authorized under the permit results in the exposure of bare soil on the state highway right-of-way, the permittee shall install erosion prevention and sediment control measures, including at a minimum the spreading of grass seed and straw on the soil. A mixture of native grasses or native plant seeds is recommended to promote native habitat restoration. Sowing of noxious weed seeds is strictly prohibited.

10. Trash and litter shall be picked up and removed from the highway right-of-way before mowing or bush-hogging; provided, however, if the permittee discovers hazardous waste that cannot be taken to a landfill but instead requires specialized disposal (e.g., automobile batteries, tires, paint, medical waste, drug paraphernalia, etc.), the permittee shall promptly notify the Department and cease any mowing or bush-hogging in the area where such waste is present.

11. Upon completion of the work, all trimmed or cut vegetation, brush, limbs, or large debris must be removed from the highway right-of-way. Permittee may be allowed to use chippers and grinders to reduce trimmed and cut vegetation into pulverized material and left on the highway right-of-way. Large piles of pulverized material are to be spread across the ground in a thin layer. Any large limbs or debris remaining in whole or only partially ground up shall be removed from the highway right-of-way. All authorized vegetation removal shall be cut to ground level. Stumps above ground level must be removed by permittee.

12. The Department reserves the right to add special permit conditions based on the particular circumstances existing at the vegetation control site. However, the Department will not add general permit terms and conditions applicable to all permits beyond the items identified in this subsection (d) without first publishing the proposed permit condition on the Department's Outdoor Advertising Office website and allowing at least thirty (30) days for public comment.

(e) Vegetation control permits issued pursuant to the Billboard Regulation and Control Act of 1972 shall be reinstated under the Outdoor Advertising Control Act of 2020. Alternatively, the owner of the device may apply for a new vegetation control permit, and the Department shall issue the permit in accordance with T.C.A. § 54-21-116 and this rule.

(3) Application for Vegetation Control Permit.

(a) No person shall begin to cut, trim, or remove vegetation located on the right-of-way adjacent to outdoor advertising device without first obtaining a vegetation control permit from the Department's Outdoor Advertising Office. Vegetation control permits issued pursuant to the Billboard Regulation and Control Act of 1972 shall be reinstated under the Outdoor Advertising Control Act of 2020. Alternatively, the owner of the device may apply for a new vegetation control permit, and the Department shall issue the permit in accordance with T.C.A. § 54-21-116 and this rule.

(b) Before applying for a vegetation control permit, the applicant must verify that the issued tag for the permitted outdoor advertising device is posted on the device and visible from the main traveled way. Applications for devices without a visible tag will not be approved and the application fee will not be returned. A new replacement tag must be requested and posted on device before the applicant reapplies for a

vegetation control permit.

(c) The following procedure will be followed in order to apply a permit for a vegetation control permit:

1. Request a vegetation control application form;

2. Return completed application to Outdoor Advertising Office, Department of Transportation, Right of Way Division, Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243, and enclose a check or money order made payable to the Tennessee Department of Transportation in the amount of one hundred dollars ($100.00) for each sign face as a non-refundable application fee; and

3. Attach the following additional information:

(i) An 8"x10" or larger photograph showing the area in which vegetation control is proposed;

(ii) A scale drawing showing vegetation proposed to be cut, trimmed, or removed, and labeling such vegetation;

(iii) A written proposal;

(iv) A scale drawing showing the proposed replacement vegetation plan;

(v) If applicable, a written proposal, with photographs, showing why a break in access control is needed, how the applicant will obtain access to the property outside the access control boundary, and the proposed extent and duration of the break in access control; and

(vi) If applicable, a written proposal in support of a request to use a herbicide, with the reason for requesting the use, the proposed location for herbicide use, the herbicide application plan, the name and pesticide applicator certification number of the person who will apply the herbicide, and the name and pest control license number of the person having supervisory responsibility for the herbicide application.

(d) The Department shall use best efforts to process an application for a permit, in accordance with this rule, within no greater than thirty (30) days after a completed application is received, as follows:

1. If the application is incomplete or defective on its face, the Department shall notify the applicant in writing no later than fifteen (15) days after receipt of the filed application of its incomplete or defective status and indicate the information or documentation that is needed to complete or correct the application.

2. If a decision to approve or deny the application cannot be made within thirty (30) days after receipt of the completed or corrected application, the Department shall contact the applicant prior to the expiration of the thirty (30) days to provide an explanation of the reasons why additional time is needed to process the application.

(e) If the application for the vegetation control permit is approved, the Department will send the applicant a written notice of approval, which shall identify the conditions

applicable to the permit. The applicant shall notify the Department's Outdoor Advertising Office of the date on which the applicant wishes the permit to be issued. In addition, the applicant must provide the following:

1. A check or money order in the amount of one hundred fifty dollars ($150.00) per sign face made payable to the Tennessee Department of Transportation for supervision of the work; provided, however, that:

   (i) One (1) vegetation control permit fee must be waived for those owners who voluntarily remove a nonconforming outdoor advertising device. If the nonconforming outdoor advertising device to be removed is not at least one hundred fifty square feet (150 sq. ft.) in size, two (2) nonconforming outdoor advertising devices must be removed to authorize waiver. The latter applies only when the outdoor advertising device around which control is to occur is larger than three hundred square feet (300 sq. ft.);

   (ii) This waiver shall not be used as evidence in any future eminent domain proceeding relating to nonconforming outdoor advertising devices;

2. A surety bond (on a form provided by the Department) in the amount of five thousand dollars ($5,000) for each separate vegetation control permit; or in the alternative, the applicant may provide a running surety bond to cover multiple active vegetation control permits or vegetation maintenance permits at the applicable amount for each permit up to the maximum capacity of the bond; and

3. A certificate of insurance in the amount of not less than three hundred thousand dollars ($300,000) for each person injured and one million dollars ($1,000,000) for each occurrence, with such insurance to remain in full force and effect until work has been completed and approved by the Department.

(f) The permittee shall complete the authorized vegetation control within the time period specified in the permit, and in any event, the permittee shall complete the vegetation control within one (1) year after the date on which the application was approved; otherwise, the application approval and permit is void. Furthermore, the applicant shall abide by all conditions imposed by the Department, as set forth on the face of the permit, or incur permit revocation and other consequences of law. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(g) The Department will accept applications and issue vegetation control permits to allow vegetation control activities on a year-round basis; provided, however, if replacement vegetation is required, a vegetation control permit may be issued only between October 1 and April 15. If the Department authorizes the use of any herbicide as a method of vegetation control, the vegetation control permit may be issued only between March 1 and October 15.

(4) Application for Vegetation Maintenance Permit.

(a) If a vegetation control permit has been issued for an outdoor advertising device, the holder of the permit may apply each subsequent year for a vegetation maintenance permit to provide annual maintenance at any one (1) location that is consistent with the original vegetation control permit.

(b) Before applying for a vegetation maintenance permit, the applicant must verify that the issued tag for the permitted outdoor advertising device is posted on the device and

visible from the main traveled way. Applications for devices without a visible tag will not be approved and the application fee will not be returned. A new replacement tag must be requested and posted on device before the applicant reapplies for a vegetation maintenance permit.

(c) The following procedure shall be followed to apply for a vegetation maintenance permit:

1. Request a vegetation maintenance application form;

2. Return completed application to Outdoor Advertising Office, Department of Transportation, Right of Way Division, Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243, and enclose a check or money order made payable to the Tennessee Department of Transportation in the amount of fifty dollars ($50.00) as a non-refundable fee; and

3. Attach the following information:

(i) Copy of the original issued vegetation control permit or copy of last issued vegetation maintenance permit;

(ii) An 8"x10" or larger photograph showing the area in which vegetation control is proposed;

(iii) A scale drawing showing vegetation proposed to be cut, trimmed, or removed, and labeling such vegetation;

(iv) A written proposal;

(v) A scale drawing showing the proposed replacement vegetation plan;

(vi) If applicable, a written proposal, with photographs, showing why a break in access control is needed, how the applicant will obtain access to the property outside the access control boundary, and the proposed extent and duration of the break in access control; and

(vii) If applicable, a written proposal in support of a request to use a herbicide, with the reason for requesting the use, the proposed location for herbicide use, the herbicide application plan, the name and pesticide applicator certification number of the person who will apply the herbicide, and the name and pest control license number of the person having supervisory responsibility for the herbicide application.

(d) If the application for a vegetation maintenance permit is approved, the Department will send the applicant a written notice of approval, which shall identify the conditions applicable to the permit. Prior to issuance of the permit, the applicant must provide the following:

1. A surety bond (on a form provided by the Department) in the amount of two thousand five hundred dollars ($2,500) for each separate vegetation maintenance permit; or in the alternative, the applicant may provide a running surety bond to cover multiple active vegetation control permits or vegetation maintenance permits at the applicable amount for each permit up to the maximum capacity of the bond; and

2. A certificate of insurance in the amount of not less than three hundred thousand

dollars ($300,000) for each person injured and one million dollars ($1,000,000) for each occurrence, with such insurance to remain in full force and effect until work has been completed and approved by the Department.

(e) Furthermore, if a vegetation maintenance permit is issued, the applicant shall abide by all conditions imposed by the Department, as set forth on the face of the permit, or incur permit revocation and other consequences of law. The vegetation maintenance permit will be subject, at a minimum, to the following conditions:

1. Permittee shall obtain any permits or approvals required by any regulatory agency having jurisdiction under federal, state, or local law over any work to be performed on the highway right-of-way, including without limitation any permits required under water quality regulations.

2. Normally, the permittee will be authorized to remove or control vegetation only through the use of mechanical methods; provided, however, that beginning on March 1, 2024, the Department may authorize the use of herbicides in specific circumstances, subject to strict conditions, including but not limited to the requirements that the use of any herbicide may be allowed only between March 1 and October 15 of each year and must be performed by a person who has a valid current pesticide applicator certification in the applicable service category for right-of-way pest control and has, or works under the direct supervision of a person who has, a valid current pest control operator license from the Tennessee Department of Agriculture.

3. Permittee shall notify any utility company that may be affected by the work, as required by law, including without limitation compliance with the Underground Utility Damage Prevention Act, T.C.A. § 65-31-101, et seq, if applicable.

4. Permittee shall comply with the provisions of the Manual on Uniform Traffic Control Devices, as adopted in TDOT Rule Chapter 1680-03-01, applicable to work being performed adjacent to highways.

5. Parking on or working from the shoulder of the highway may be authorized only by special written permission from the Department. If authorization has been granted, a Shoulder Permit shall be attached to Vegetation Control Permit. Permittee's work forces must be present at all times any equipment is located on the shoulder.

6. There shall be no overnight parking of equipment on highway right-of-way, and no equipment shall be parked on the shoulder of the highway when the permittee's work forces are not present.

7. If the highway right-of-way is access-controlled, the permittee shall not obtain access to the right-of-way across the access control boundary, and the permittee shall not cut or remove any access control fence; provided, however, that the applicant may request the Department to permit a break in access control to obtain access to the right-of-way. If the applicant requests a break in access control, the applicant shall include as a part of the vegetation maintenance permit application a written proposal, with photographs, showing why the break in access control is needed, how the applicant will obtain access to the property outside the access control fence, and the proposed extent and duration of the break in access control. The applicant will not be granted a break in access control for the purpose of obtaining access to the property outside the access control fence. The permittee will be required to provide a temporary barrier to protect access control when not on the job site and will be

required to restore the access control fence to the Department's specifications promptly upon completion of the vegetation control work. In the event that the permittee, or the permittee's agent or representative, does unauthorized damage to a fence or any other public property in the work area, the permittee shall repair or replace the same at the permittee's expense.

8. Any drainage tiles, culverts, or other drainage infrastructure must remain free and clear of cut brush, pulverized debris, or disturbed soil.

9. If any work authorized under the permit results in the exposure of bare soil on the state highway right-of-way, the permittee shall install erosion prevention and sediment control measures, including at a minimum the spreading of grass seed and straw on the soil. A mixture of native grasses or native plant seeds is recommended to promote native habitat restoration. Sowing of noxious weed seeds is strictly prohibited.

10. Trash and litter shall be picked up and removed from the highway right-of-way before mowing or bush-hogging; provided, however, if the permittee discovers hazardous waste that requires specialized disposal (e.g., automobile batteries, tires, paint, medical waste, drug paraphernalia, etc.), the permittee shall promptly notify the Department and wait for further instructions before mowing or bush-hogging in that area.

11. Upon completion of the work, all trimmed or cut vegetation, brush, limbs, or large debris must be removed from the highway right-of-way. Permittee may be allowed to use chippers and grinders to reduce trimmed and cut vegetation into pulverized material and left on the highway right-of-way. Large piles of pulverized material are to be spread across the ground in a thin layer. Any large limbs or debris remaining in whole or only partially ground up shall be removed from the highway right-of-way. All authorized vegetation removal shall be cut to ground level. Stumps above ground level must be removed by permittee.

12. The Department reserves the right to add special permit conditions based on the particular circumstances existing at the vegetation control site. However, the Department will not add general permit terms and conditions applicable to all permits beyond the items identified in this subsection (e) without first publishing the proposed permit condition on the Department's Outdoor Advertising Office website and allowing at least thirty (30) days for public comment.

(f) The Department will accept applications and issue vegetation maintenance permits on a year-round basis. If the Department authorizes the use of any herbicide as a method of vegetation control, the vegetation maintenance permit will only be issued between March 1 and October 15.

(5) Enforcement of Vegetation Control

(a) The Commissioner may revoke, suspend, or modify any vegetation control permit or vegetation maintenance permit for cause, including violation of any terms or conditions of the permit.

(b) If, before obtaining an outdoor advertising device permit and a vegetation control permit, vegetation located on state highway right-of-way is removed, cut, or trimmed, and application is subsequently made for an outdoor advertising permit, then the Commissioner may deny the permit.

(c) If, before applying for a vegetation control permit, vegetation located on state highway right-of-way is removed, cut, or trimmed in the vicinity of an outdoor advertising device, which action was reasonably calculated to afford greater visibility of the outdoor advertising device, then the Commissioner may revoke the outdoor advertising device permit or permits for the affected outdoor advertising devices.

(d) Prior to invoking this section, the Commissioner or the Commissioner's designee shall advise the affected outdoor advertising device permit applicant or holder, whichever is appropriate, that a preliminary determination of illegality has been made. The party so advised must be given the opportunity to request a hearing to be conducted pursuant to contested case provisions of the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, before the Commissioner may make a final determination of illegality.

Authority: T.C.A. §§ 54-21-111, 54-21-116, and 54-21-117.

Rule 1680-02-03-.09 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-06-03-.09 Appendix.

(1) Agreements between the Tennessee Department of Transportation and the United States Department of Transportation, Federal Highway Administration.

(a) Original Agreement (November 11, 1971)

A G R E E M E N T

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM.

* * *

THIS AGREEMENT made and entered into this 11th day of November, 1971, by and between the United States of America represented by the Secretary of Transportation, acting by and through the FEDERAL HIGHWAY ADMINISTRATOR, hereinafter referred to as the "ADMINISTRATOR", and the State of Tennessee, represented by the DEPARTMENT OF HIGHWAYS acting by and through its Commissioner, hereinafter referred to as the "STATE".

W I T N E S S E T H:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid Primary Systems should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(d) of Title 23, United States Code, authorizes the Secretary of Transportation to enter into agreements with the several States to determine the size, lighting and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or com-

mercial under authority of State law or in unzoned commercial or industrial areas, as may be determined by agreements between the several States and the Secretary of Transportation; and

WHEREAS, the purpose of said agreements is to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect the public investment in the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the STATE OF TENNESSEE desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and said National policy.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. Definitions

A. The term "ACT" means Section 131 of Title 23, United States Code (1965) commonly referred to as Title I of the Highway Beautification Act of 1965.

B. Commercial or industrial activities for purposes of unzoned industrial and commercial areas mean those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.
3. Transient or temporary activities.
4. Activities not visible from the main traveled way.
5. Activities more than 660 feet from the nearest edge of the right-of-way.
6. Activities conducted in a building principally used as a residence.
7. Railroad tracks and minor sidings.

C. Zoned commercial or industrial areas mean those areas which are reserved for business, commerce, or trade pursuant to State or local zoning regulations.

D. Unzoned commercial or industrial areas mean those areas on which there is located one or more permanent structures devoted to a commercial or an industrial activity or on which a commercial or an industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 600 feet from and beyond the edge of such activity in each direction and a corresponding zone directly across a primary highway which is not also a limited access highway when the same is not a public park, public playground, public recreational area, public forest, wildlife, or waterfowl refuge, historic

site, scenic area, cemetery, or primarily residential in character. The unzoned areas shall not include land across the highway from a commercial or an industrial activity when said highway is an Interstate or a controlled access primary highway.

All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage, processing or landscaped areas of the commercial or industrial activity, not from the property lines of the activity, and shall be along or parallel to the edge of the pavement of the highway.

E. Interstate System means that portion of the National System of Interstate and Defense Highways located within this STATE, as officially designated, or as may hereafter be so designated, by the Commissioner of Highways, and approved by the Secretary of Transportation, pursuant to the provisions of Title 23, United States Code.

F. Primary System means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the Commissioner of Highways, and approved by the Secretary of Transportation, pursuant to the provisions of Title 23, United States Code.

G. Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

H. Main-traveled way means the traveled way of a highway on which through traffic is carried.

In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

I. Outdoor advertising or sign means any outdoor sign, display, device, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard or other thing which is used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of any portion of any Interstate or primary highway.

J. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

II. Scope of Agreement

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 the Interstate and Federal-aid Primary Systems,in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of either or both of said systems.

III. State Control

The STATE hereby agrees that, in all areas within the scope of this Agreement, the STATE shall effectively control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this Agreement, other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon, in accordance with the following:

A. In zoned commercial and industrial areas, the STATE may notify the Secretary as notice of effective control that there has been established within such areas comprehensive zoning which regulates the size, lighting, and spacing of outdoor advertising signs consistent with the intent of the Act and with customary use.

B. In all other zoned and unzoned commercial and industrial areas, within the scope of this Agreement, the criteria set forth below shall apply.

Size of Signs

1. The maximum area for any one sign shall be 1200 square feet, however, with a maximum height of 30 feet or maximum length of 60 feet, inclusive of any border and trim but excluding ornamental base or apron supports and other structural members; provided further, however, that in counties having a population greater than 250,000, the STATE may establish standards for maximum size greater than 1200 square feet in area, provided that any such standards shall be in accord with customary use of off-premise outdoor advertising within the area in which

said standards will apply. In no instance, however, shall these standards exceed 3000 square feet, inclusive of any border and trim, and exclusive of ornamental base or apron supports and other standard members.

2. The area shall be measured by the smallest square rectangle, triangle, circle or combination thereof which will encompass the entire sign.

3. A sign structure may contain one or two signs per facing and may be placed doubled-faced, back to back or V-type, but the total area of any facing may not exceed 1200 square feet.

Spacing of Signs

1. Interstate Highways and Controlled Access Highways on the Federal-aid Primary System
(a) No two structures shall be spaced less than 500 feet apart on the same side of the highway, provided, however, that such signs may be located within 500 feet of another sign when the signs are separated by buildings or other obstructions so that only one sign located adjacent to or within the 500 feet zone is visible from the highway at any one time.
(b) Outside incorporated municipalities no structure may be located adjacent to, or within 500 feet of an interchange, or intersection at grade, measured along the Interstate or controlled access highways on the primary system from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

2. Non-Controlled Access Primary Highways
(a) Outside of the corporate limits of a municipality no two structures shall be spaced less than 300 feet apart on the same side of the highway.
(b) Within the corporate limits of a municipality no two structures shall be spaced less than 100 feet apart on the same side of the highway.
(c) Provided, however, with respect to a and b above, that structures may be spaced closer to others when they are separated by buildings or other obstructions so that only one is visible within the otherwise applicable spacing requirement at any one time.

3. Explanatory Notes
(a) Official and "on premise" signs, as defined in Section 131(c) of Title 23, United States Code, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.
(b) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

Lighting of Signs

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or Federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

C. The STATE and local governments shall have full authority under any present or future zoning laws to zone areas for commercial or industrial purposes and the action of the STATE and local governments in this regard will be accepted for the purposes of this Agreement. At any time that a local government adopts comprehensive zoning which includes the regulation of outdoor advertising, the STATE may so

certify to the ADMINISTRATOR and control of outdoor advertising in commercial or industrial zones will transfer as provided in subsection A of this section.

IV. Interpretation

The provisions contained herein shall constitute the minimum acceptable standards for effective control of signs, displays, and devices within the scope of this Agreement.

Nothing contained herein shall be construed to abrogate or prohibit the STATE or any local government from exercising a greater degree of control of outdoor advertising than that required or contemplated by the Act or from adopting standards which are more restrictive in controlling outdoor advertising than the provisions of this Agreement.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress, the parties reserve the right to re-negotiate this Agreement or to modify it to conform with any amendment.

V. Effective Date

This Agreement shall become effective upon the passage of an Act by the General Assembly authorizing the same.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officials on the day and date first above written.

STATE OF TENNESSEE
DEPARTMENT OF HIGHWAYS

By: _____
COMMISSIONER

UNITED STATES OF AMERICA

By: _____
FEDERAL HIGHWAY ADMINISTRATOR

(b) Supplemental Agreement (October 16, 1984)

SUPPLEMENTAL AGREEMENT

RELATIVE TO

AGREEMENT FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM.

This agreement made and entered into this 16 day of OCT, 1984 by and between the United States of America, represented by the Secretary of Transportation, acting by and through the Federal Highway Administrator, hereinafter referred to as the "Administrator" and the State of Tennessee, represented by the Department of Transportation, acting by and through its Commissioner, hereinafter referrred to as the "State".

WITNESSETH:

WHEREAS, on or about November 11, 1971 the parties hereto entered into agreement, hereinafter referred to as the "Original Agreement", to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect the public investment in the Interstate and Federal-aid Primary Systems, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the General Assembly of the State of Tennessee authorized the Commissioner of Transportation to enter into the Original Agreement; and

WHEREAS, the General Assembly provided that any modification of the Original Agreement should become effective only upon passage of an Act authorizing same by the General Assembly; and

WHEREAS, the General Assembly has authorized certain amendments to the Original Agreement, said amendments being set forth in Chapter 133, Section 4 of the Public Acts of 1983; and

WHEREAS, the General Assembly authorized the Commissioner of Transportation to execute a modification of the Original Agreement to reflect said amendments.

NOW, THEREFORE, the parties hereto agree that the Original Agreement shall be amended as follows:

SECTION 1. Provision I. (Definitions) Part D. (Unzoned Commercial or Industrial Areas) of the Original Agreement is amended by deleting the following language and punctuation:

> "Unzoned commercial or industrial areas means those areas on which there is located one or more permanent structures devoted to a commercial or an industrial activity or on which a commercial or an industrial activity is actually conducted, whether or not a permanent structure is located thereon,"

and by substituting instead the following language and punctuation:

> "Unzoned commercial or industrial areas means those areas on which there are located one or more permanent structures within which a commercial or an industrial business is actively conducted, and which are equipped with all customary utilities facilities and open to the public regularly or regularly used by employees of the business as their principal work station, or which, due to the nature of the business, are equipped, staffed and accessible to the public as is customary,".

SECTION 2. Provision III. (State Control) Part B. (Size of Signs), 1. of the Original Agreement is amended by deleting the provision in its entirety and by substituting instead the following:

> "The maximum area for any one sign shall be seven hundred seventy-five square feet, including any border and trim but excluding ornamental base or apron supports and other structural members; provided further however that in counties having a population greater than two hundred fifty thousand, the maximum size of any one sign shall be twelve hundred square feet including any border and trim, but excluding ornamental base or apron supports and other structural members."

SECTION 3. Provision III. (State Control) Part B. (Size of Signs), 3. of of the Original Agreement is amended by deleting the language:

> "but the total area of any facing may not exceed 1200 square feet",

and by substituting instead the following:

> "but the total area of any facing may not exceed seven hundred seventy-five square feet, unless the sign structure is located in a county having a population greater than two hundred fifty thousand, in which case the total area of any facing may not exceed twelve hundred square feet inclusive of any border and trim, but excluding ornamental base or apron supports and other structural members.".

SECTION 4. Provision III. (State Control) Part B. (Spacing of Signs) 1.(a) of the Original Agreement is amended by deleting from lines 1, 2, 3, 4 and 6 the symbol and word "500 feet" and by substituting instead the symbol and word "1,000 feet".

SECTION 5. Provision III. (State Control) Part B. (Spacing of Signs) 1.(b) of the Original Agreement is amended by deleting from line 2 the symbol and word "500 feet" and substituting instead the symbol and word "1,000 feet".

SECTION 6. Provision III. (State Control) Part B. (Spacing of Signs) 2.(a) of the Original Agreement is amended by deleting from line 2 the symbol and word "300 feet" and by substituting instead the symbol and word "500 feet".

SECTION 7. All other provisions of the Original Agreement shall remain in full force and effect.

SECTION 8. This agreement shall become effective upon execution.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective duly authorized officials on the day and date first above written.

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

BY: _____
Robert E. Farris
Commissioner

UNITED STATES OF AMERICA

BY: _____
Federal Highway Administrator

(2) Brightness Standards for Changeable Message Signs with a Digital Display

T.C.A. § 54-21-119(h) establishes the brightness standards for changeable message signs with a digital display, as follows:

(a) All changeable message signs installed on or after July 1, 2014, must come equipped with a light-sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(b) The brightness of light emitted from a changeable message sign must not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200') for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250') for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350') for those sign faces greater than six hundred eighty square feet (680 sq. ft.), or subject to the measuring criteria in the applicable table set forth in subdivision (h)(4).

(c) Any measurements required pursuant to this subsection (h) must be taken from a point within the highway right-of-way at a safe distance from the edge of the traveled way, at a height above the roadway that approximates a motorist's line of sight, and as close to perpendicular to the face of the changeable message sign as practical. If perpendicular measurement is not practical, valid measurements may be taken at an angle up to forty-five (45) degrees from the center point of the sign face. If measurement shows a level above that prescribed in subdivision (h)(4), the exact calculations must be provided to the sign permit holder.

(d) In the event it is found not to be practical to measure a changeable message sign at the distances prescribed in subdivision (h)(2), a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth in this subdivision (h)(4). In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed foot candle level above ambient light must not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the tables in subdivisions (h)(4)(A), (B), (C), and (D), as applicable.

For any measuring distance between the alternative measuring distances set forth in the following tables, the prescribed foot candle level above ambient light must not exceed the interpolated level derived from the following formula:

[12 = (D2<2>/01<2>) x 11]

Where I1 = the prescribed foot candle level above ambient light for the measuring distance listed in the tables, I2 = the derived foot candle level above ambient light for the desired measuring distance, D1 = the desired measuring distance in feet, and D2 = the alternative measuring distance in feet listed in the tables, as follows:

1. For changeable message signs less than or equal to three hundred square feet (300 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	0.68

125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

2. For changeable message signs greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.2
125	0.77
150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

3. For changeable message signs greater than three hundred eighty-five square feet (385 sq. ft.) but less than or equal to six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

4. For changeable message signs greater than six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	3.675
125	2.35
150	1.63
200	0.92
250	0.59
275	0.49
300	0.41
325	0.35
350	0.3

400	0.23
425	0.2
450	0.18
500	0.15

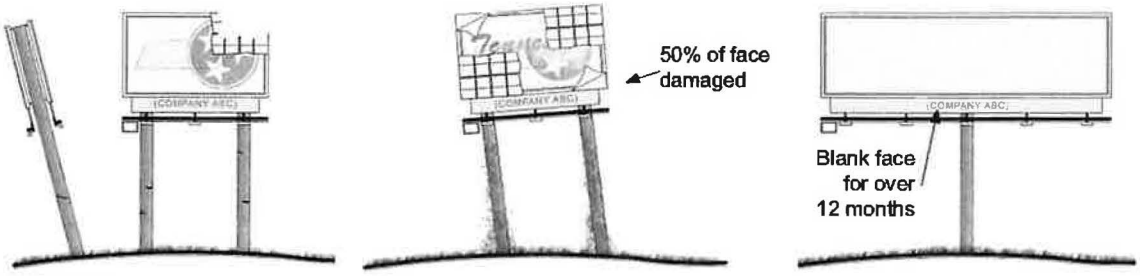
(e) The brightness standards established in T.C.A. § 54-21-119(h) apply to all changeable message signs located in this state operated pursuant to a permit issued by the Commissioner.

(3) Illustrations

(a) Abandoned Devices

CONTROL OF OUTDOOR ADVERTISING

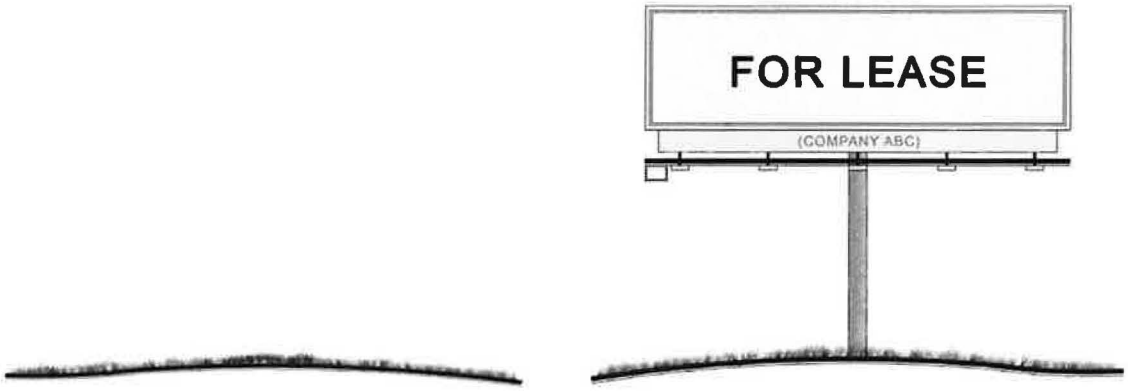
ABANDONED DEVICES



(1) Damaged
(Not Destroyed / Not Abandoned)

(2) Abandoned

(3) Abandoned



(4) Abandoned
(No structure)

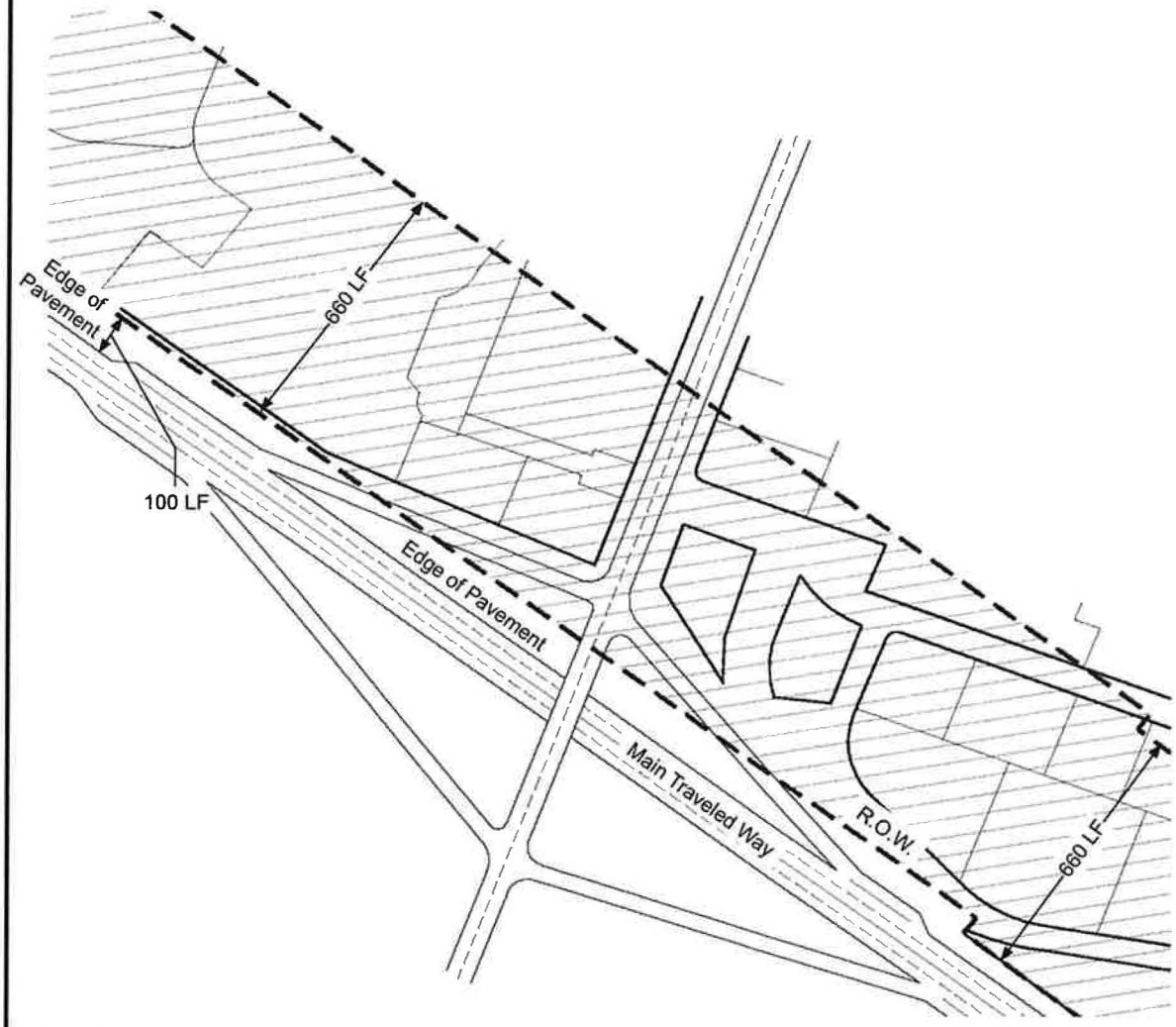
(5) Not Abandoned

"Abandoned Outdoor Advertising Device" means any regulated outdoor advertising device which for a twelve (12) month period falls into one or more of the following classifications:
(1) A device in the case of a wooden sign structure means that sixty percent (60%) or more of the upright supports of the sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports.
(2) A device whose sign face is damaged fifty percent (50%) or more.
(3) A device that displays no message and blank display.
(4) A device that has been removed from its permitted locations for more than twelve (12) months.
(5) Not abandoned, device with display.

Not to Scale

(b) Measurement of Adjacent Area at Interchanges

MEASUREMENT OF THE ADJACENT AREA



(a) Measurement of the adjacent area.

1. In general, the measurement of the adjacent area shall begin at the nearest edge of the highway right-of-way property line and continue outward six hundred and sixty feet (660'); provided, however, that:

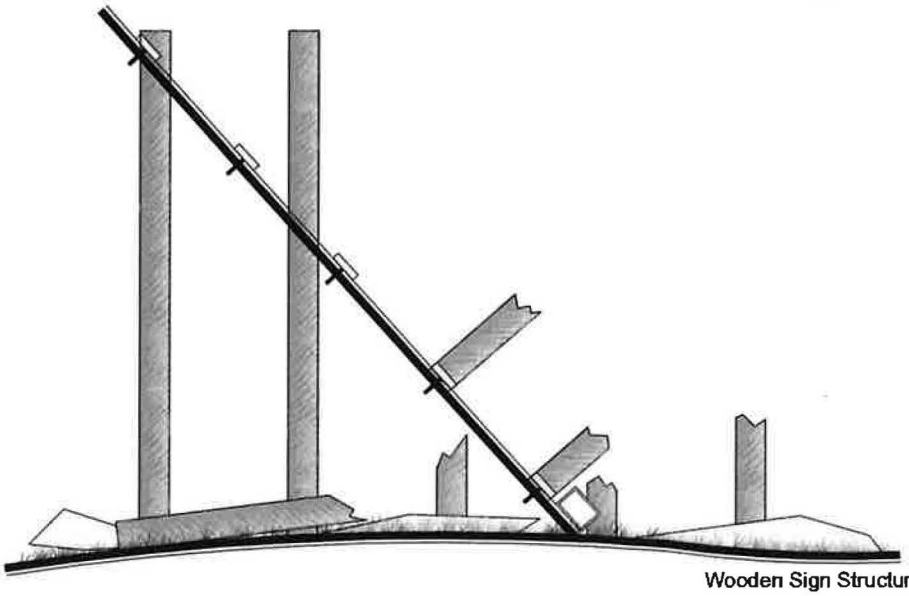
2. Where the highway right-of-way width extends outward more than one hundred feet (100') from the main traveled way of an interstate or other controlled access highway at an interchange with another highway that is not a controlled access highway, the measurement of the adjacent area beyond the interchange will begin at a line that is one hundred feet (100') outward from, and parallel to, the outside edge line of the through lanes on the main traveled way, excluding shoulders, exit ramps, entrance ramps, and acceleration or deceleration lanes.

Not to Scale

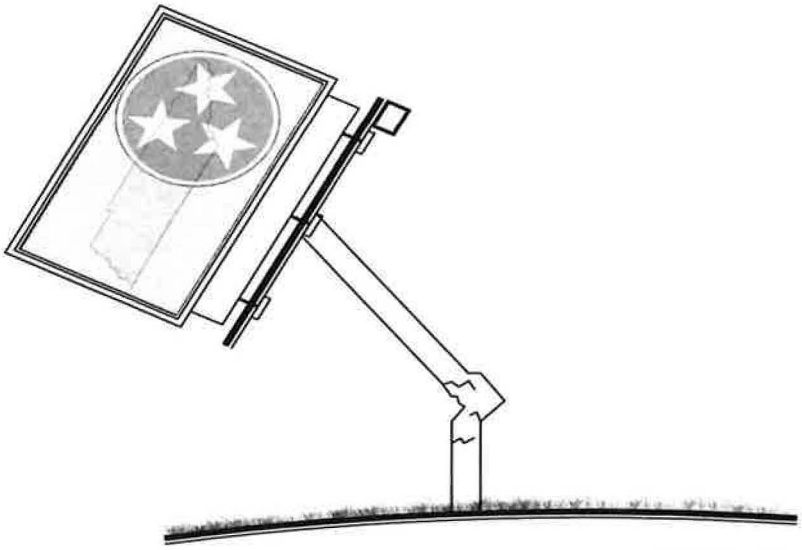
(c) Destroyed Non-Conforming Outdoor Advertising Device

CONTROL OF OUTDOOR ADVERTISING

DESTROYED NON-CONFORMING OUTDOOR ADVERTISING DEVICE



Wooden Sign Structure



Metal Sign Structure

Destroyed Non-Conforming Device

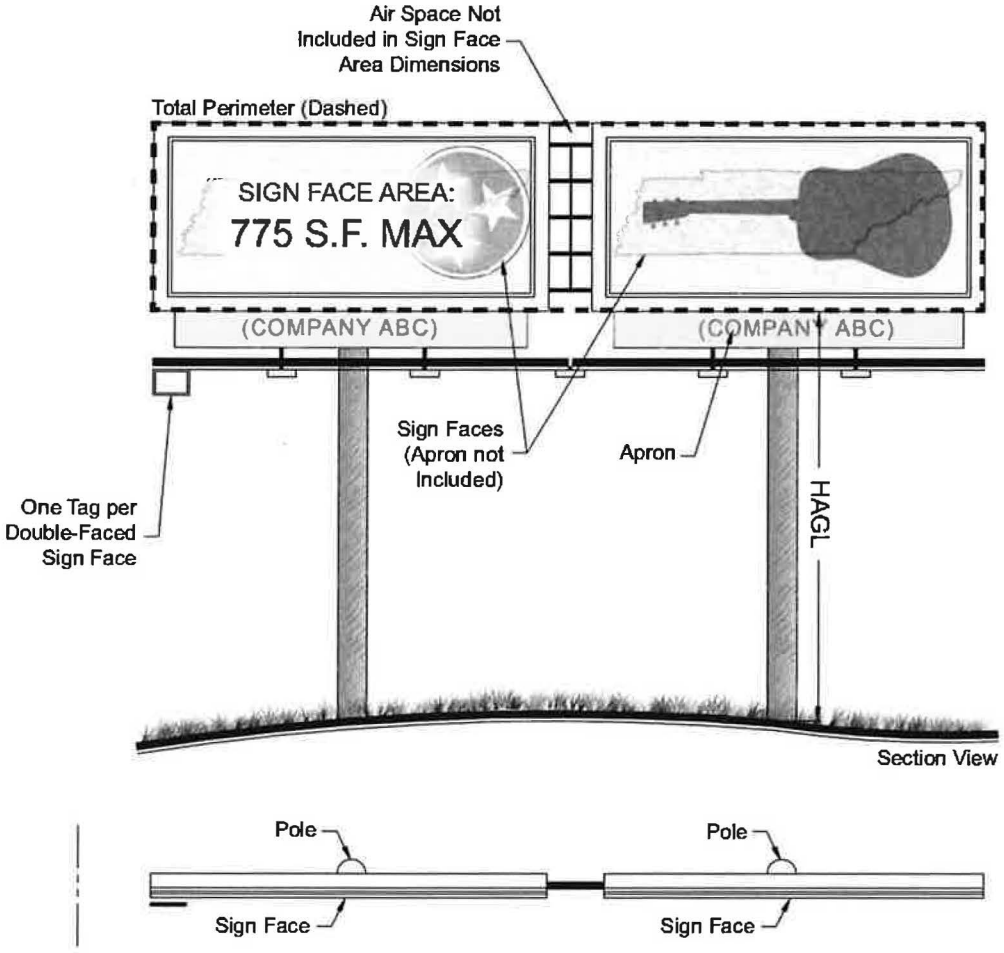
"Destroyed" means with respect to non-conforming outdoor advertising devices, that, in the case of wooden sign structures, sixty percent (60%) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above the ground of each, broken, bent, or twisted support.

Not to Scale

(d) Device Types: Double-Faced

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: DOUBLE-FACED



"Double-faced device" means a single faced sign with side by side sign faces oriented in the same direction.

This type of sign face only requires one (1) permit tag when both faces are connected with bracing.

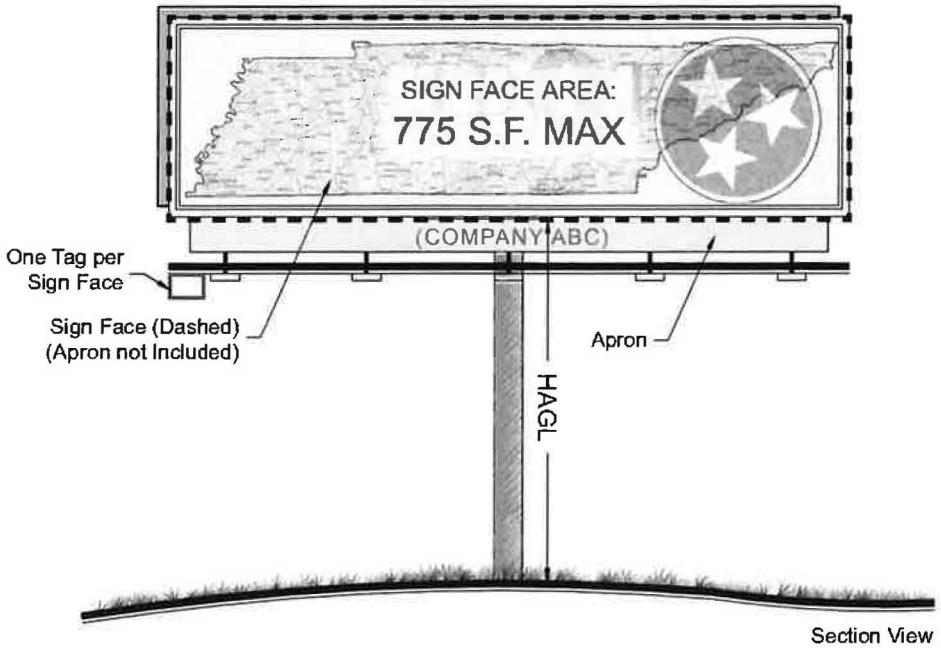
Signs must be physically connected to form one (1) contiguous structure. The perimeter of the double-faced device,excluding airspace, is used to calculate the total sign face area that must not exceed 775 feet.

Not to Scale

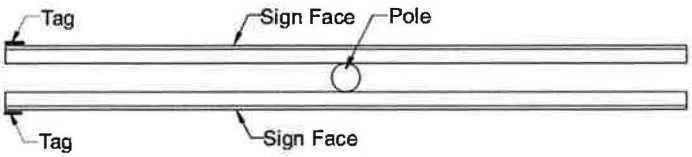
(e) Device Types: Back-To-Back

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: BACK-TO-BACK



Tag must be affixed to the outdoor advertising device and visible from the main travel way.



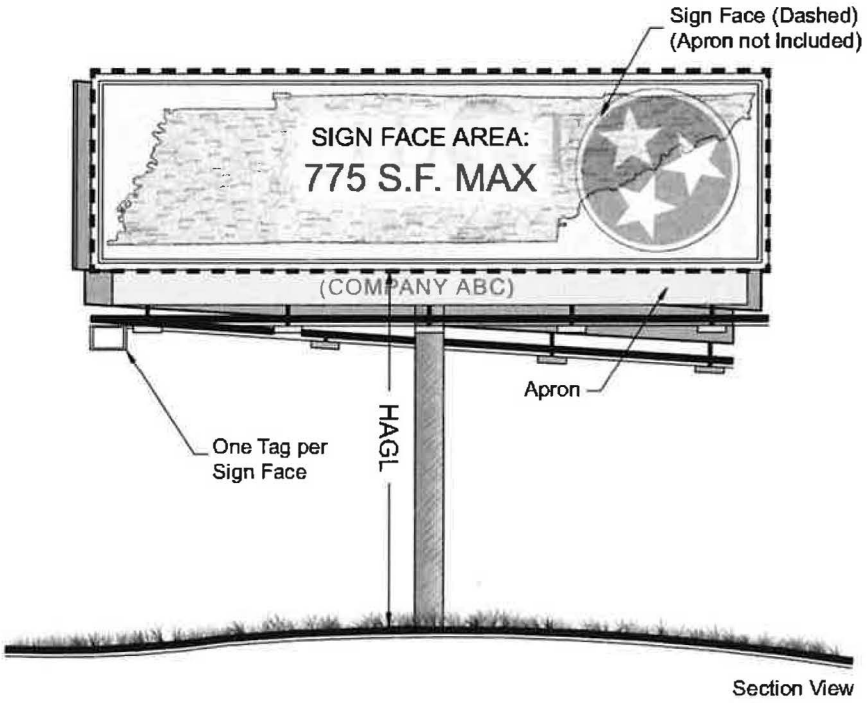
Back-to-back device means two (2) single faces, oriented back to back with sign faces oriented in the opposite direction.

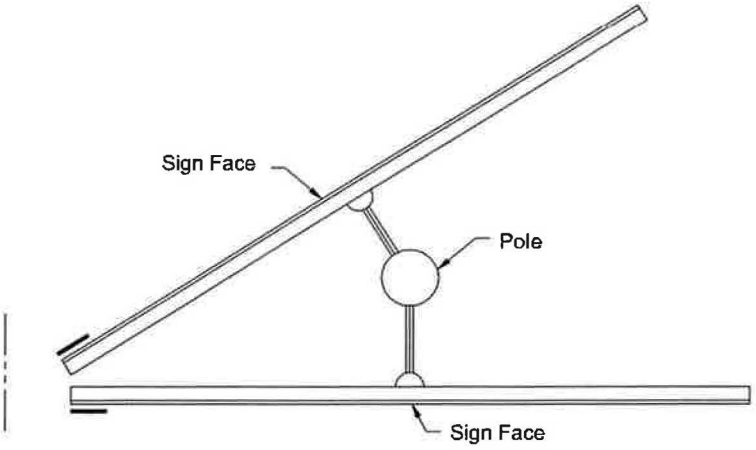
Not to Scale

(f) Device Types: V-Type

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: V-TYPE





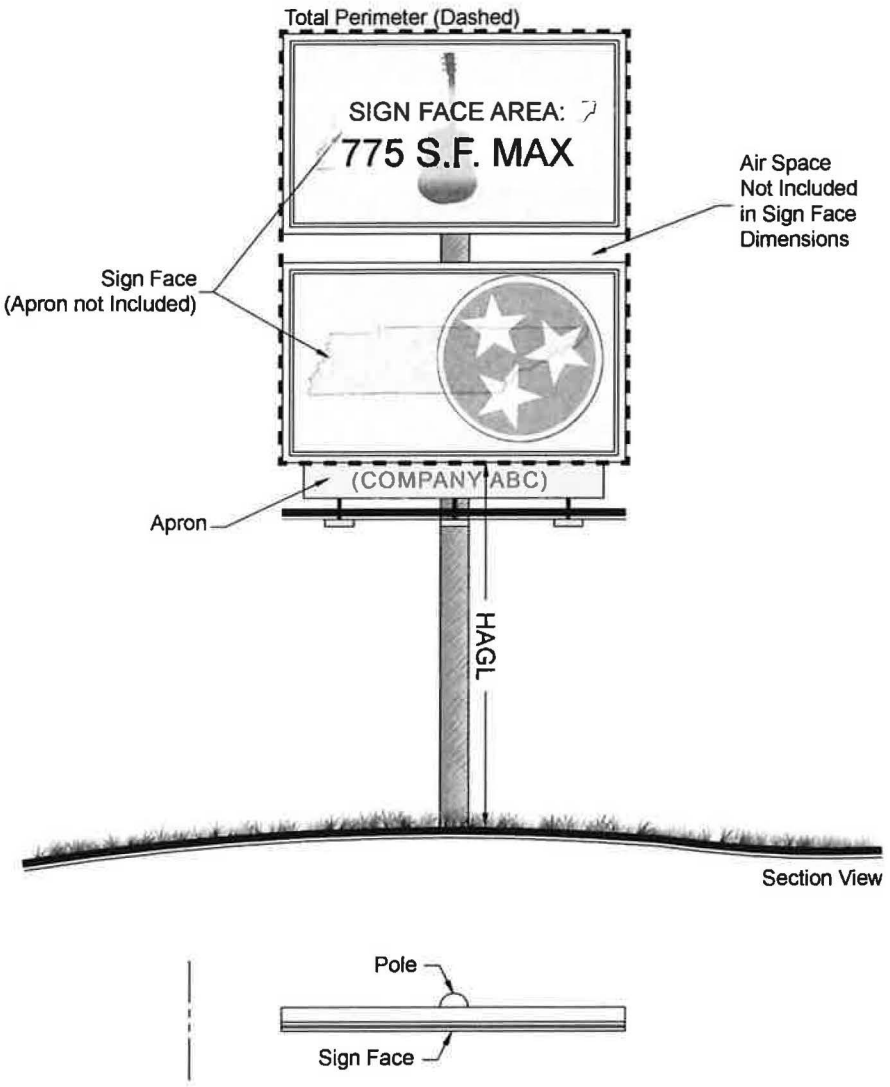
"V" type device means two (2) single faces, oriented back to back in a "V" shaped configuration with sign faces oriented in the opposite direction.

Not to Scale

(g) Device Types: Stacked Display

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: STACKED DISPLAY



After July 2001, permits are no longer issued for stacked sign faces in which two (2) or more displays are stacked one (1) above the other including airspace. Stacked sign faces erected prior to July 1, 2001 are unaffected. Permit holders may move the stacked sign face to a new eligible conforming permit location. TCA § 54-21-118.

"Stacked device" means an outdoor advertising device in which two (2) or more displays facing in the same direction of travel along the highway are stacked one (1) above the other in multiple sign faces separated by airspace and regulated together under one permit, as provided in T.C.A. § 54-21-118.

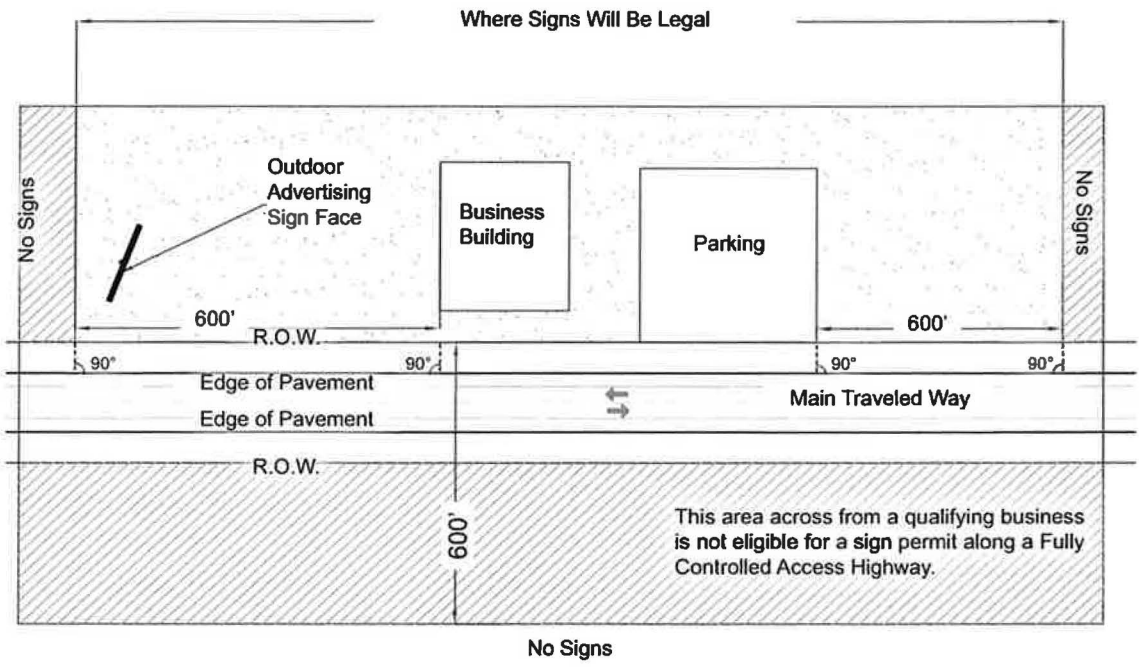
Total perimeter used to calculate total sign face area.

Not to Scale

(h) Unzoned Commercial or Industrial

CONTROL OF OUTDOOR ADVERTISING

UNZONED COMMERCIAL OR INDUSTRIAL



The 600 feet shall be measured along the edge of the pavement of the traveled way nearest the commercial activity from points that are perpendicular to the edge of pavement.

Legend

No Signs Allowed

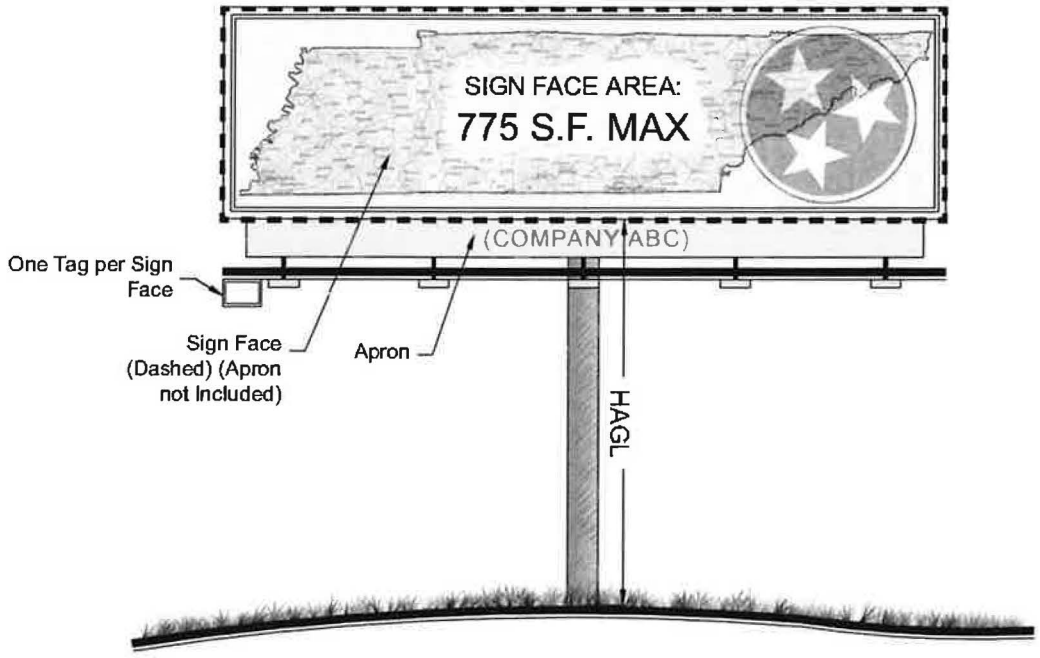
Signs Eligible for Permitting

Not to Scale

(i) Sign Face Size & Parts

CONTROL OF OUTDOOR ADVERTISING

SIGN FACE SIZE & PARTS



The maximum total gross area for a sign face shall be 775 square feet, with a maximum length of 60 feet or a maximum height of 30 feet (A sign face 30'x60' is not allowed).

In counties having a population greater than 250,000 the State Department will accept the particular county's standard size, but in no instance shall this standard size, determined by the local governing body, exceed 1,200 square feet, inclusive of any border and trim and advertising embellishments but exclusive of ornamental base or apron supports and other standard members.

"Sign face" means the entire surface of a sign used for the display of advertising. This includes the area normally intended for O.D.A messages. The area of a sign face is taken as the smallest measurement of a square, rectangle, or circle, within which such advertising or informative content is actually displayed. Apron not included.

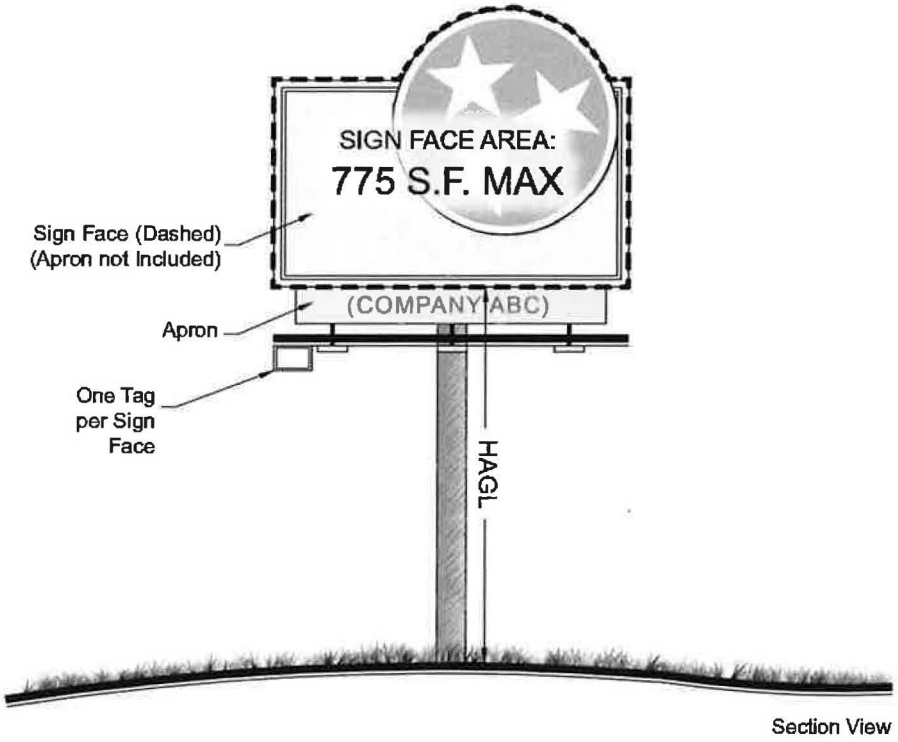
"Height above ground level" (HAGL) means the distance from the ground to the bottom of the sign face.

Not to Scale

(j) Sign Face Size

CONTROL OF OUTDOOR ADVERTISING

SIGN FACE SIZE



The maximum total gross area for a sign face shall be 775 square feet, with a maximum length of 60 feet or a maximum height of 30 feet (A sign face 30'x60' is not allowed).

"Height above ground level" (HAGL) means the distance from the ground to the bottom of the sign face.

"Sign face" means the entire area of a sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, taken as the smallest measurement of a square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed.

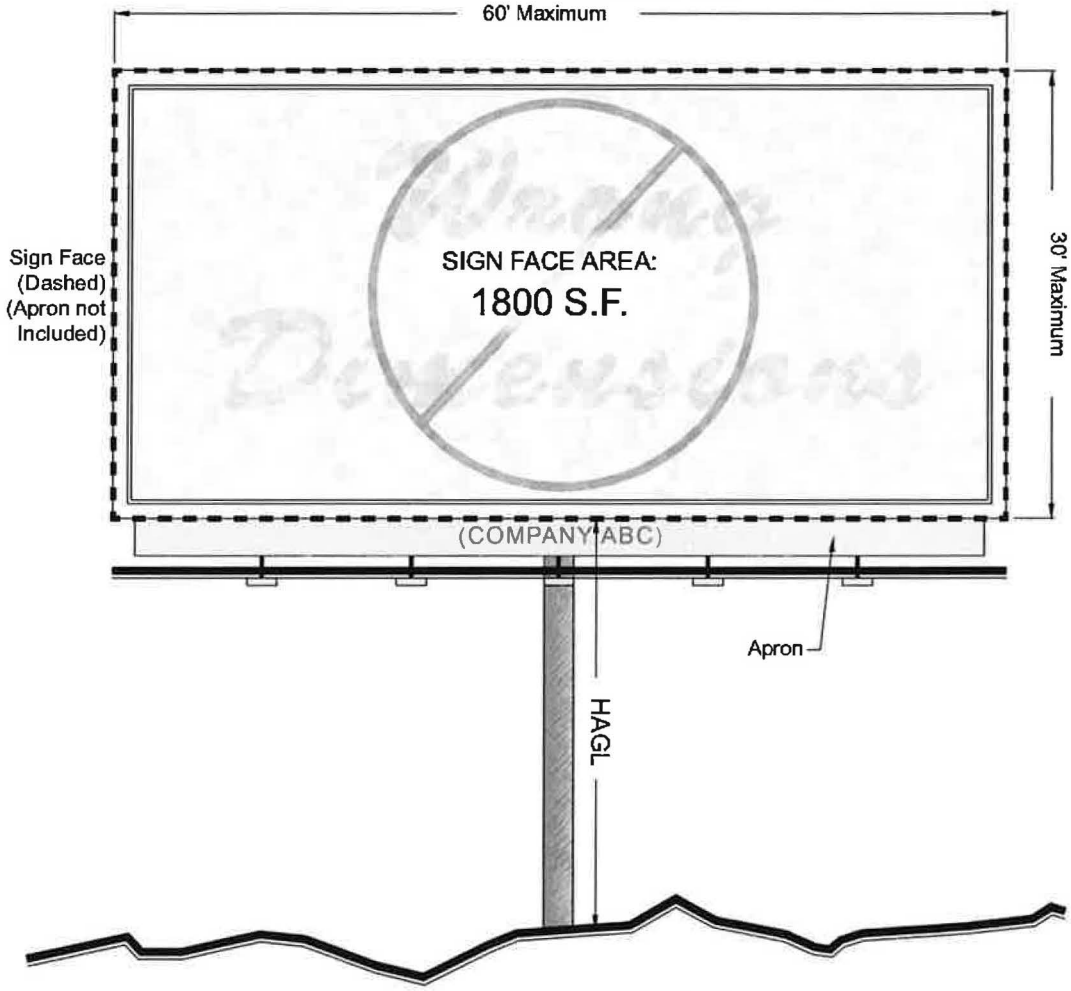
Not to Scale

(k) Incorrect Sign Face Size

CONTROL OF OUTDOOR ADVERTISING

INCORRECT SIGN FACE SIZE

(A sign face 30'x60' is not allowed)



This sign face is not allowed because it exceeds the maximum sign face size of 775 square feet.

The sign face may either have a maximum length of 60 feet OR a maximum height of 30 feet. NOT BOTH.

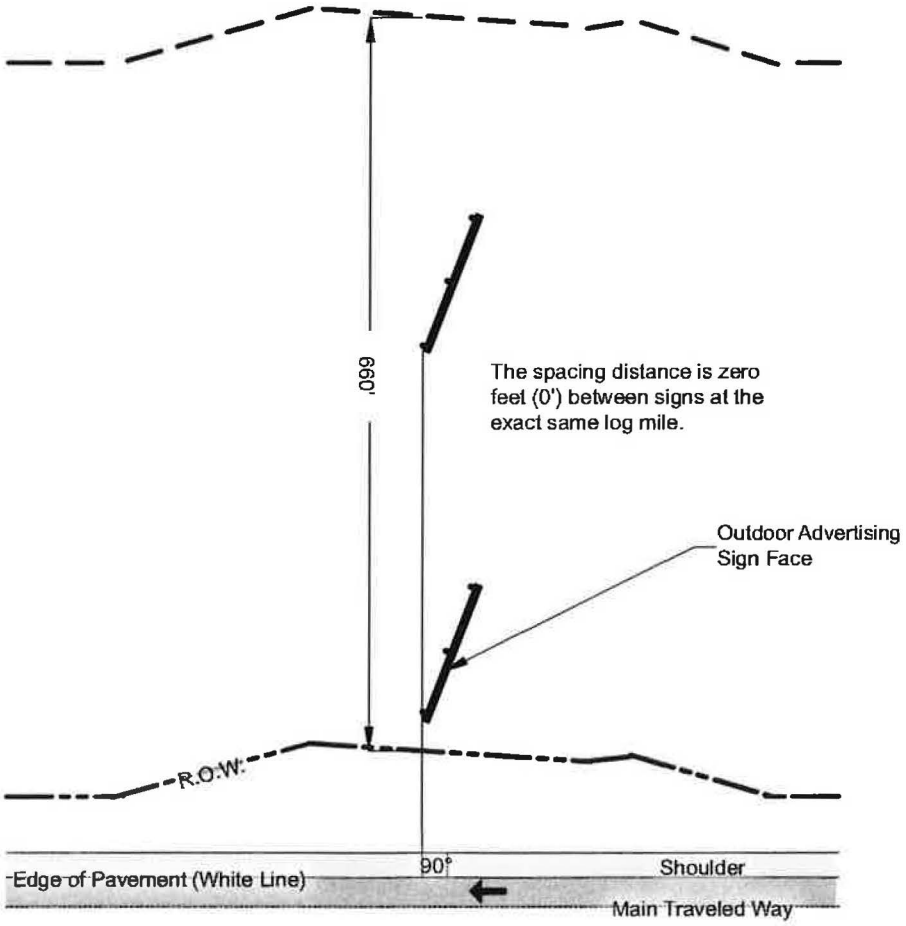
In counties having a population greater than 250,000 the state Department will accept the particular county's standard size, but in no instance shall this standard size, determined by the local governing body, exceed 1,200 square feet, inclusive of any border and trim and advertising embellishments but exclusive of ornamental base or apron supports and other standard members.

Not to Scale

(l) Sign Spacing: Measurement Methods

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT METHODS



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between log mile points directly perpendicular to each.

All outdoor advertising devices located within 660 feet of the nearest edge of the right-of-way require a permit.

REGULATORY SPACING:

•Fully access controlled highways:
No two (2) devices shall be spaced less than 1,000 feet apart on the same side of highway.

•Not fully access controlled highways:
Outside the corporate limits of an incorporated municipality:
No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

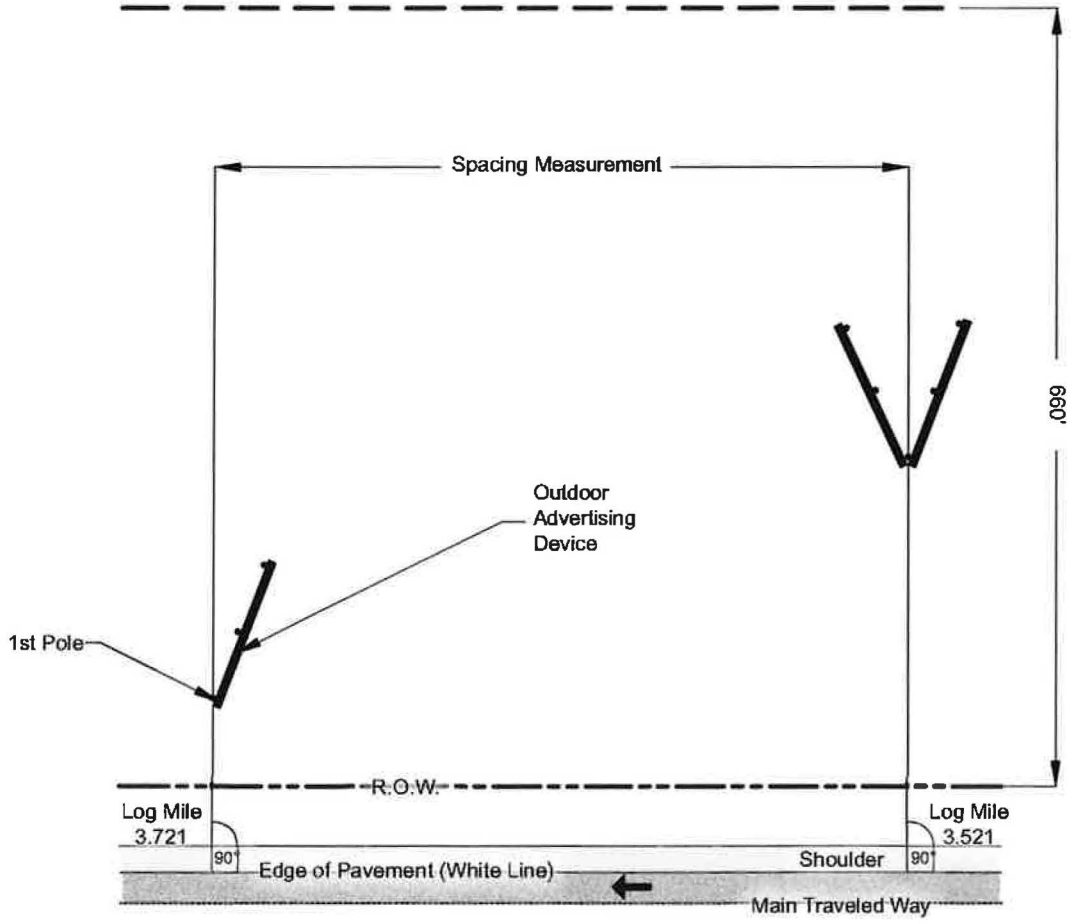
Within the corporate limits of an incorporated municipality:
No two (2) devices shall be spaced less than 100 feet apart on the same side of highway.

Not to Scale

(m) Sign Spacing: Measurement Methods

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT METHODS



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between log mile points directly perpendicular to each.

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No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

Within the corporate limits of an incorporated municipality:
No two (2) devices shall be spaced less than 100 feet apart on the same side of highway.

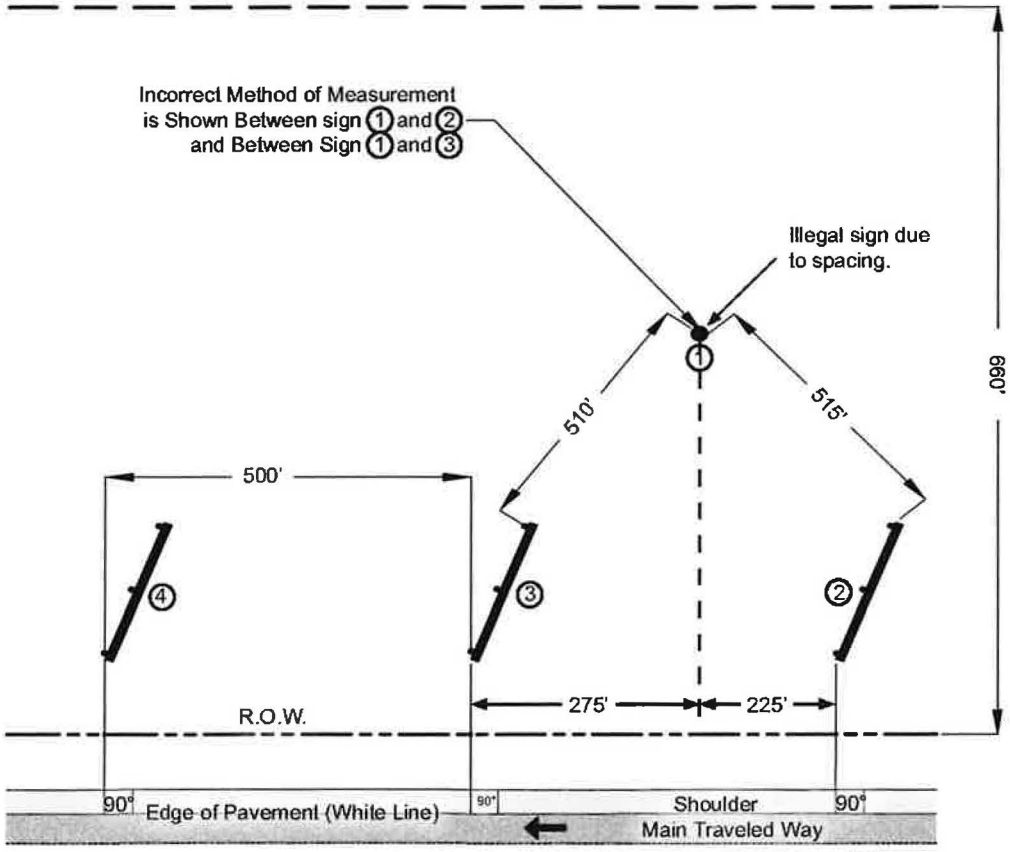
Not to Scale

(n) Sign Spacing: Measurement Methods

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT METHODS

Correct method of measurement is shown between sign ② and ③ and between sign ③ and ④



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between points directly perpendicular to each.

All outdoor advertising devices located within 660 feet of the nearest edge of the right-of-way require a permit.

REGULATORY SPACING:

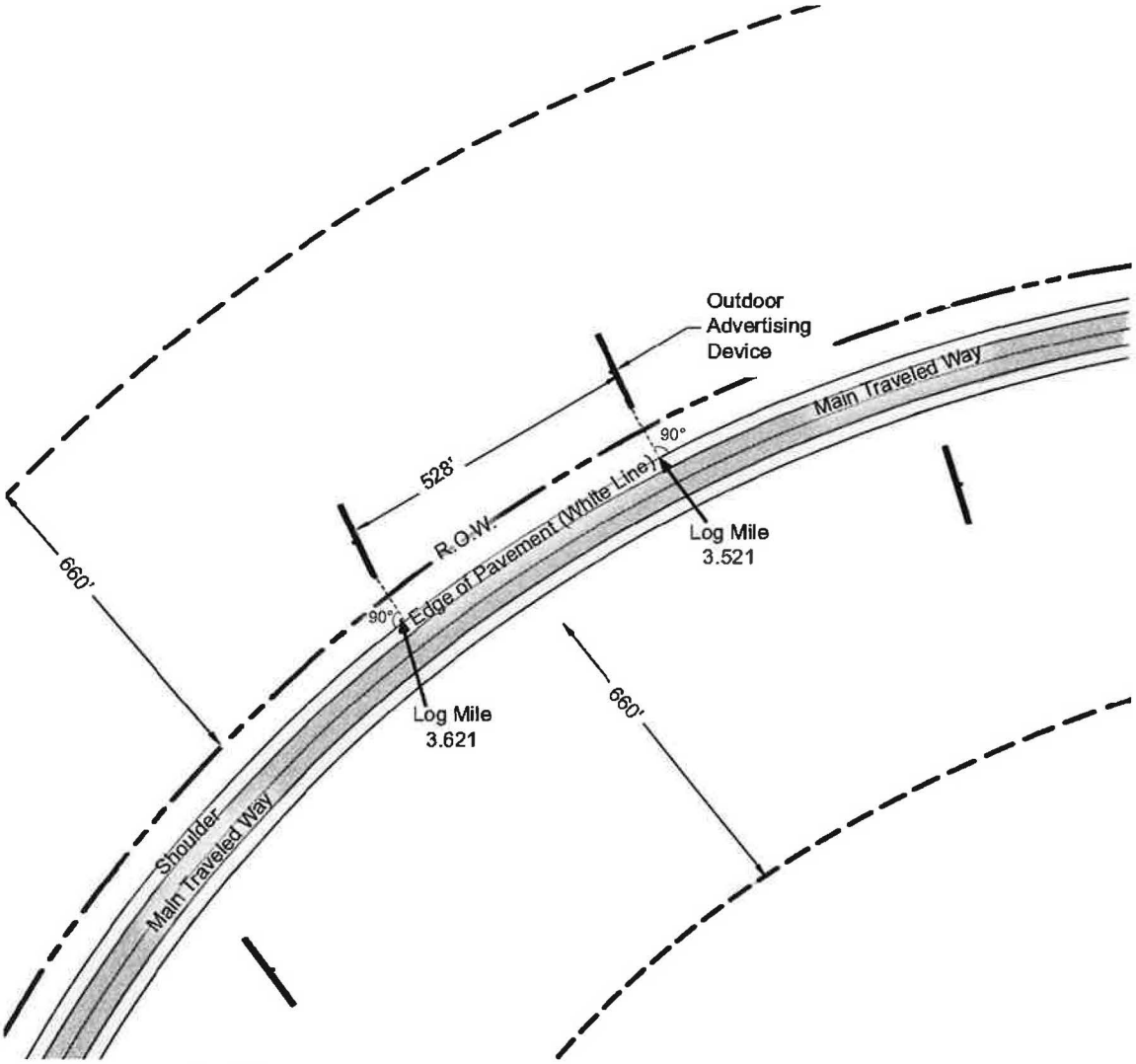
•Outside the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

Not to Scale

(o) Sign Spacing: Measurement Along A Curve

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT ALONG A CURVE



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between log mile points directly perpendicular to each.

All outdoor advertising devices located within 660 feet of the nearest edge of the right-of-way require a permit.

REGULATORY SPACING:

•Fully access controlled highways:
No two (2) devices shall be spaced less than 1,000 feet apart on the same side of highway.

•Not fully access controlled highways:
Outside the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

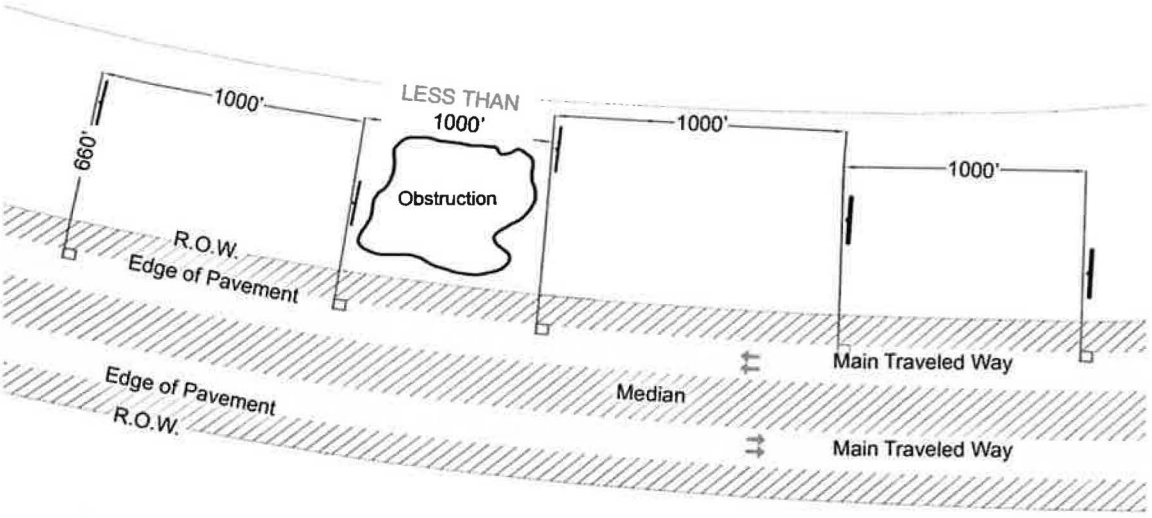
Within the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 100 feet apart on the same side of highway.

Not to Scale

(p) Spacing Exception

CONTROL OF OUTDOOR ADVERTISING

SPACING EXCEPTION



With respect to the one thousand (1,000) foot spacing rule in Rule 1680-06-03-.03(1)(f)1.(i), devices may be spaced closer together when they are seperated by buildings or other obstructions, not including any other outdoor advertising device, so that only one is visible from the main traveled way within the otherwise applicable spacing requirement at any one time.

Legend

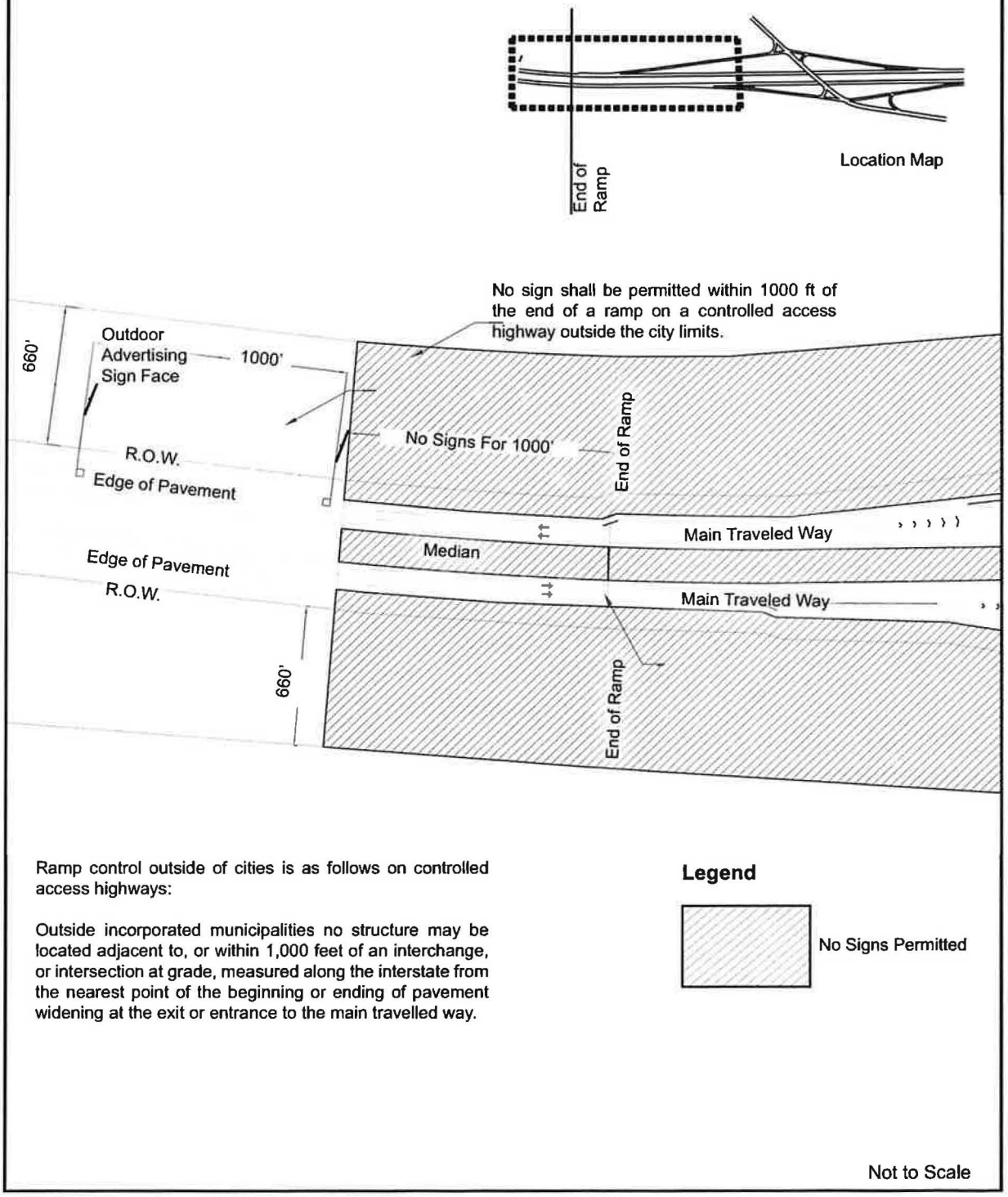
No Signs Permitted

Not to Scale

(q) Ramp Control: Outside the City Limits

CONTROL OF OUTDOOR ADVERTISING

RAMP CONTROL: OUTSIDE THE CITY LIMITS



Ramp control outside of cities is as follows on controlled access highways:

Outside incorporated municipalities no structure may be located adjacent to, or within 1,000 feet of an interchange, or intersection at grade, measured along the interstate from the nearest point of the beginning or ending of pavement widening at the exit or entrance to the main travelled way.

Legend

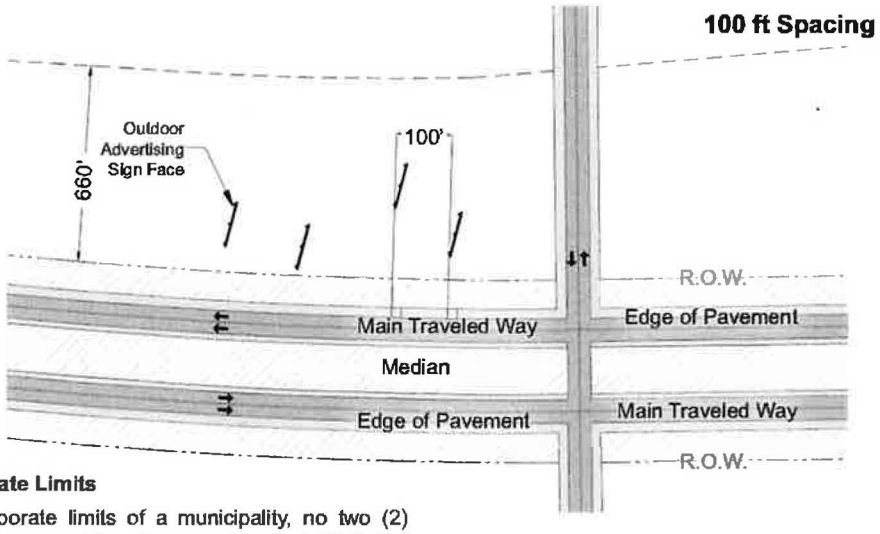
No Signs Permitted

Not to Scale

(r) Sign Spacing: Not Fully Controlled Access Control

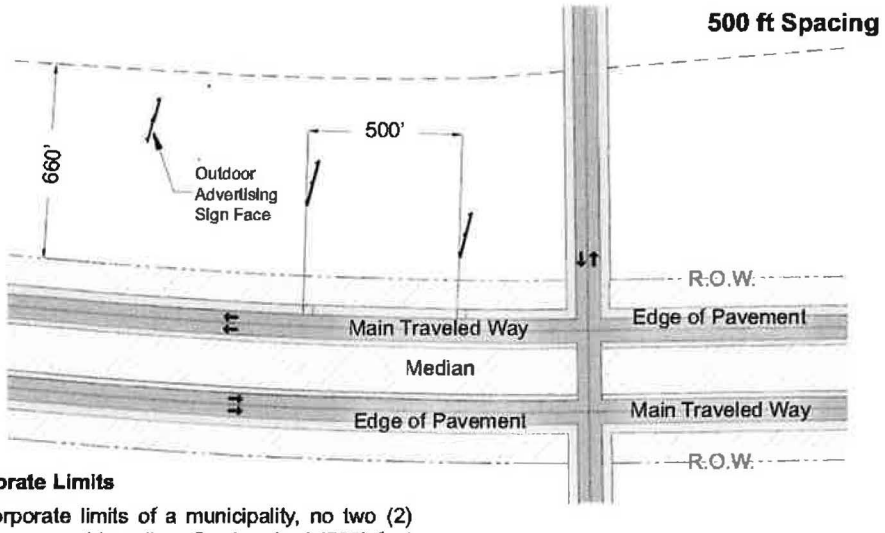
CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: NOT FULLY ACCESS CONTROL



Within Corporate Limits

Within the corporate limits of a municipality, no two (2) devices shall be spaced less than one hundred (100) feet apart on the same side of the highway.



Outside Corporate Limits

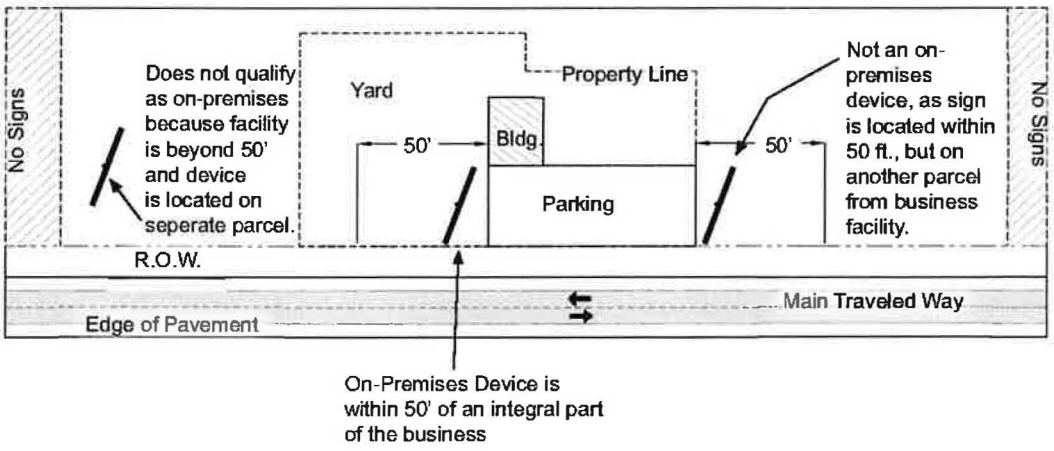
Outside the corporate limits of a municipality, no two (2) devices shall be spaced less than five hundred (500) feet apart on the same side of the highway.

Not to Scale

(s) On-Premises Device

CONTROL OF OUTDOOR ADVERTISING

ON-PREMISES DEVICE



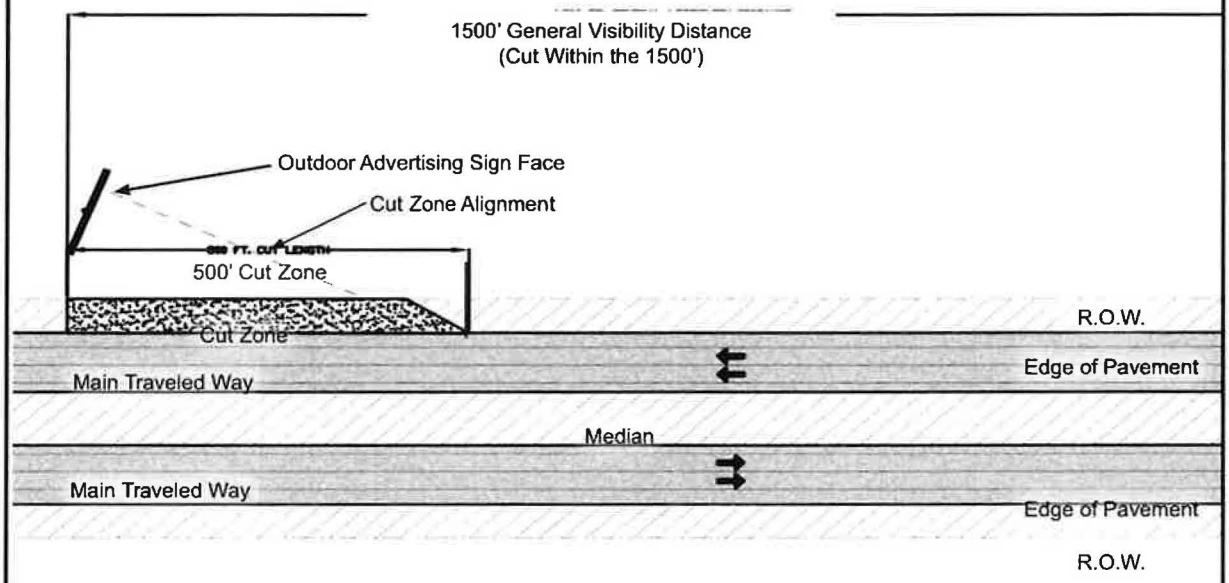
"On-Premises Device" means a sign: that is located within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as the facility that owns or operates the sign, or within fifty feet (50') of and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located.

Not to Scale

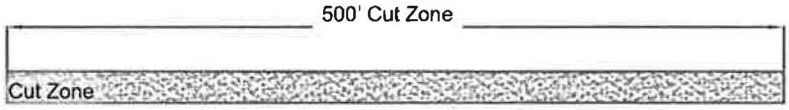
(t) Vegetation Control: Example Only

CONTROL OF OUTDOOR ADVERTISING

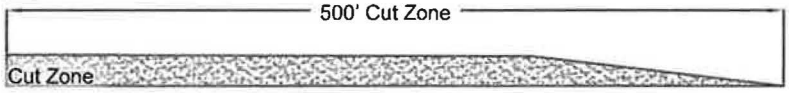
VEGETATION CONTROL: EXAMPLE ONLY



Typical Cut Configurations



Block Cut



Wedge Cut

Removing, cutting, and/or trimming vegetation may be allowed only in right-of-way adjacent to an outdoor advertising device along the outside edge of the pavement of a highway.

No permits shall be issued for vegetation removal in any median areas or interchange quadrants along a controlled access highway.

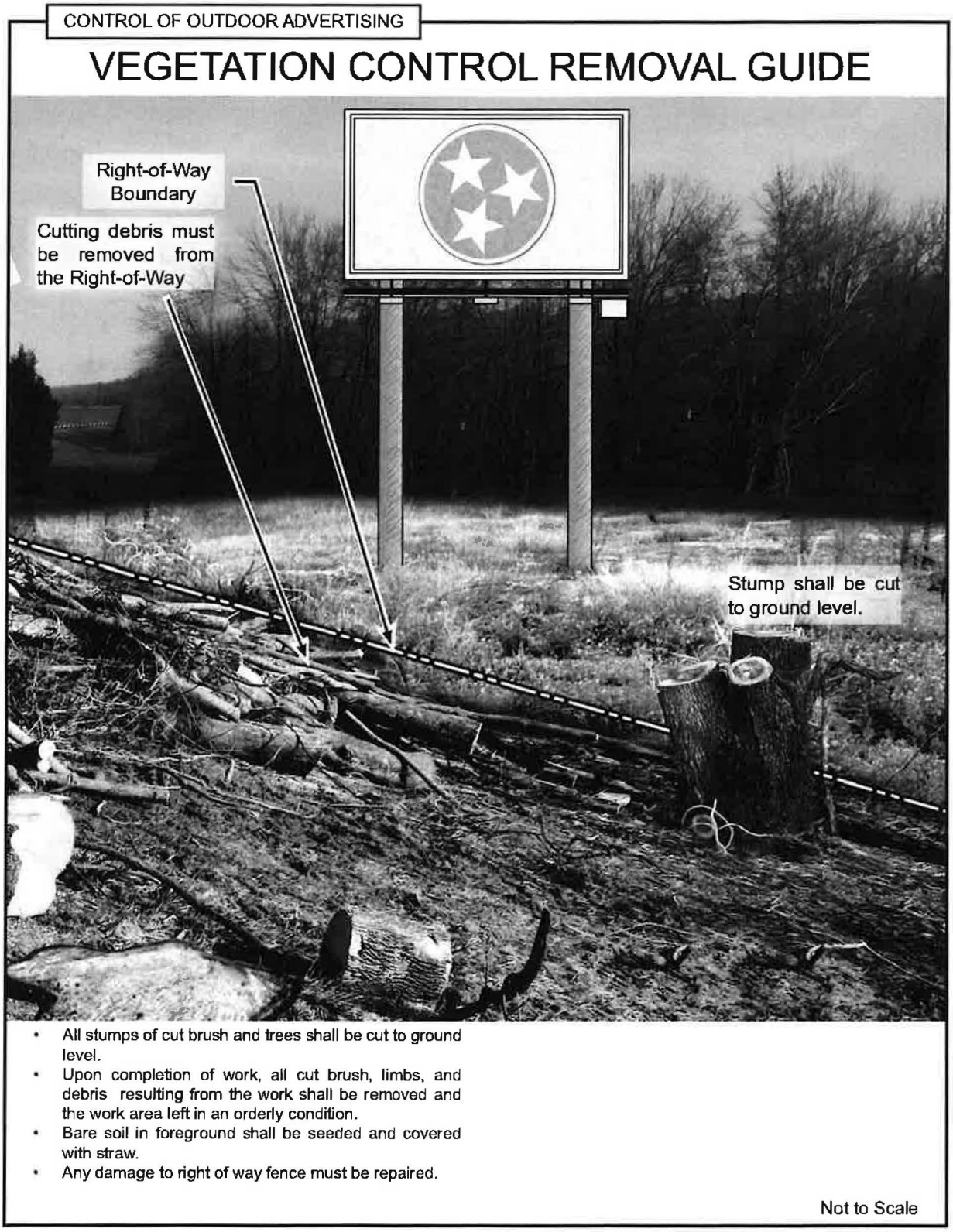
Legend

No Vegetation Removal/Control

Vegetation Removal/ Control Allowed

Not to Scale

(u) Vegetation Control Removal Guide



Authority: T.C.A. § 54-21-111.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TN Department of Transportation (board/commission/other authority) on February 13, 2024 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *(09/03/2021)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(10/27/2021)*

Date: February 13, 2024

Signature: Howard H. Eley

Name of Officer: Howard H. Eley

Title of Officer: Deputy Governor and Commissioner

Agency/Board/Commission: Tennessee Department of Transportation

Rule Chapter Number(s): 1680-02-03 [renumbered 1680-06-03]

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Jonathan Skrmetti
Attorney General and Reporter

Feb. 13, 2024
Date

Department of State Use Only

Filed with the Department of State on: 2/14/2024

Effective on: 5/14/2024

Tre Hargett
Secretary of State

RECEIVED
Feb 14 2024, 4:15 pm
Secretary of State
Division of Publications

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

A copy of the Department of Transportation's Responses to Public Comments from the October 27, 2021, public hearing is attached.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Statement of Tennessee Department of Transportation – Introduction

T.C.A. § 54-21-111 directs the Commissioner of the Tennessee Department of Transportation (TDOT) to promulgate and enforce rules as necessary to implement the Outdoor Advertising Control Act of 2020, T.C.A. § 54-2-101, et seq. (the "2020 Act"), and 23 U.S.C. § 131 (the Federal Highway Beautification Act). The Federal Highway Beautification Act directs states to provide for the effective control of outdoor advertising along interstates and other primary federal-aid highways. Any state that fails to provide for the effective control of outdoor advertising is subject to the withholding of 10% of that state's apportionment of federal-aid highway funds. The purpose of these proposed rules is to provide for the effective control of outdoor advertising, as directed, in a manner consistent with 23 U.S.C. § 131 and the 2020 Act.

Part 1: Analysis of Impact on Small Business[1] (T.C.A. § 4-5-402)

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules do not overlap or duplicate any other federal or state government rules. The rules of the Federal Highway Administration in 23 CFR Part 750 do provide guidance to the States in how to implement the Federal Highway Beautification Act, and TDOT's proposed rules are consistent with the guidance in the federal rules. Local governments may have their own separate laws and ordinances for the regulation and control of outdoor advertising, but these local laws do not apply to or control TDOT's regulation of outdoor advertising devices under the 2020 Act or these rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rules are written in ordinary, non-technical English, and common terms used throughout the rules are clearly defined. Promoting regulatory clarity and transparency has been one of major goals of this rulemaking process. Proposed rule revisions address potential ambiguities in the law, and other clarifications have been made in response to comments from the outdoor advertising industry and others, as follows:

- Clarifies that a sign qualifying for exemption from regulation as an "on-premises device" based on its location will not be considered a regulated "outdoor advertising device" based on the receipt of compensation merely because the owner/operator of the property pays a sign company to lease the use of the sign as an on-premises device;
- Clarifies that the term "outdoor advertising device" includes any sign the Department is required to regulate to provide for the effective control of outdoor advertising in accordance with 23 U.S.C. § 131 and as further provided in the 2020 Act.
- Clarifies that a building, structure, or object having a primary function other than outdoor advertising will not be considered a "sign" subject to regulation merely because words or figures are displayed on the surface of the building, structure, or object absent the receipt of compensation for displaying another party's messages on the building, structure, or object;
- Provides objective standards for determining when an outdoor advertising device will be considered abandoned based on remaining in "substantial need of repair" for twelve months or more; and provides that the 12-month period for establishing abandonment may be suspended during a period of involuntary discontinuance, such as the closure of the highway in front of the device;
- Details how "original conforming devices" that were permitted between 1972 and 1984 under the spacing, size, and lighting criteria included in the original 1971 agreement between TDOT and the Federal Highway Administration will continue to be regulated as a type of conforming device; and

[1] Per T.C.A. § 4-5-102(13) "small business" means "a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees."

- Describes the general conditions for permits to conduct vegetation control activities on state highway rights-of-way.

In addition, the appendix attached to the proposed rules will contain illustrations designed to make certain aspects of the rules more clearly understandable through visual representations.

(3) The establishment of flexible compliance and reporting requirements for small business:

In response to comments from the industry, the proposed rules will increase regulatory flexibility in many ways, including as follows:

- Establishes criteria for determining whether an outdoor advertising device within the adjacent area of a highway on the interstate or primary system has the purpose or effect of directing advertising messages to the main traveled way of a regulated highway before determining whether the device should be regulated.
- Allows for advertising embellishments outside the normal sign face;
- Provides an opportunity for permit applicants to correct incomplete applications before the applications are returned;
- Details a process for determining a "reasonable amount of time" to cure a violation that would otherwise be grounds for denying a permit to a previously unregulated device;
- Allows permittees to construct outdoor advertising devices smaller than the dimensions of the device described in the application;
- Authorizes running surety bonds for vegetation control activities on state highway rights-of-way; and
- Allows permittees to apply for and obtain vegetation control permits on a year-round basis, subject to some seasonal restrictions if replanting is required or if herbicide use is allowed.

The proposed rules do not have any specific reporting requirements for businesses.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small business:

As noted in section (3) above, the proposed rules will allow for flexible compliance schedules by, for example:

- Providing an opportunity for permit applicants to correct incomplete applications before the applications are returned; and
- Detailing a process for determining a "reasonable amount of time" to cure a violation that would be otherwise be grounds for denying a permit to a previously unregulated device.

The proposed rules do not have any specific reporting requirements for businesses.

(5) The consolidation or simplification of compliance or reporting requirements for small business:

The proposed rules do not have any specific reporting requirements for businesses.

(6) The establishment of performance standards for small business as opposed to design or operational standards required in the proposed rule:

The zoning, size, spacing, and lighting restrictions for permitted outdoor advertising devices are established by agreement between TDOT and the Federal Highway Administration as authorized by State law, per T.C.A. § 54-21-113. Likewise, the additional spacing requirement and operational standards for outdoor advertising devices with digital displays are established by statute in T.C.A. § 54-21-119.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not create any occupational licenses or other barriers to entry into the outdoor advertising or on-premises sign businesses.

Part 2: Economic Impact Statement (T.C.A. § 4-5-403)

(1) The type or types of small business[2] and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

The businesses subject to the current and proposed rules are firms or individuals who erect, maintain, and operate outdoor advertising devices adjacent to state highways on the interstate and other primary federal-aid systems of highways. Currently, TDOT has approximately 10,000 active outdoor advertising permits held by more than 750 separate firms or individuals. TDOT does not ask applicants or permittees to report the number of their employees, and therefore TDOT cannot precisely identify how many of the permittees would be characterized as small businesses, but probably it is a majority. It is also likely, however, that a majority of the permits are held by businesses that have more than 50 employees.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed rules do not impose any reporting or recordkeeping requirements on the firms or individuals engaged in the business of outdoor advertising.

The administrative fees applicable to outdoor advertising devices are established in state law, as follows:

- $200 application fee for new outdoor advertising permits [T.C.A. § 54-21-104(b)(1)];
- $70 application fee for previously unregulated outdoor advertising devices [T.C.A. § 54-21-104(b)(2)];
- $200 application fee for new digital displays [T.C.A. § 54-21-104(b)(3)];
- $70 application fee for digital displays erected on a previously permitted device between 9/11/2019 and 6/22/2020 [T.C.A. § 54-21-104(b)(3)];
- $70 annual renewal fee for outdoor advertising permits [T.C.A. § 54-21-104(c)(1)];
- $200 late fee for late annual renewal of a permit [T.C.A. § 54-21-104(c)(2)];
- $25 replacement tag fee [T.C.A. § 54-21-104(e)];
- $10 permit transfer fee [T.C.A. § 54-21-104(f)];
- $200 time extension fee for digital display upgrades [T.C.A. § 54-21-119(f)];
- $100 application fee for vegetation control permits per sign face [T.C.A. § 54-21-116(a)(1)];
- $150 vegetation control permit fee per sign face [T.C.A. § 54-21-116(a)(1)]; and
- $50 annual vegetation maintenance permit fee [T.C.A. § 54-21-116(a)(1)].

There are no additional administrative fees proposed in the rules. In the aggregate, TDOT receives somewhat less than $1,000,000 each year from all outdoor advertising fees and vegetation control fees paid by the firms or individuals engaged in the business of outdoor advertising.

There are some additional administrative costs associated with permits to conduct vegetation control activities on state highway rights-of-way adjacent to permitted outdoor advertising devices. The proposed rules require a $5,000 surety bond for vegetation control permits and a $2,500 surety bond for annual vegetation maintenance permits to cover potential damage to the state highway rights-of-way or access control fences. Vegetation control permittees are also required to carry commercial liability insurance in the minimum amount of $300,000 per claimant and $1,000,000 per occurrence (matching the State's liability limits under T.C.A. § 9-8-307) to protect against personal injuries or property damage that may occur as a result of a permittee's vegetation control activities on state highway rights-of-way.

Completing the application forms and related requirements to obtain outdoor advertising permits and vegetation control permits does require some time but not any specialized professional skills. The amount of such administrative costs is not known but is not believed to be significant.

[2] Per T.C.A. § 4-5-102(13) "small business" means "a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees."

(3) A statement of the probable effect on impacted small businesses and consumers:

The proposed rules will not have a significant impact on small businesses in comparison to the current outdoor advertising rules. As noted in Part 1, section (6) above, the basic regulatory standards are established by statute, and as noted in section (2) above, the permit fees are also established by statute, and neither the basic standards nor the fees will change. The commercial liability insurance coverage amounts will be increased somewhat to match the State's current liability limits. On the other hand, as noted in Part 1, sections (3) and (4), the proposed rules provide additional opportunities for regulatory flexibility that should benefit the businesses engaged in outdoor advertising.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome on small business:

See discussion of revisions that provide opportunities for regulatory flexibility in Part 1, sections (3) and (4) above.

(5) A comparison of the proposed rule with any federal or state counterparts:

The proposed rules are to some extent based on definitions and guidance contained in the Federal Highway Administration's rules, 23 CFR Part 750, which prescribe federal policies and requirements that all States must satisfy to achieve effective control of outdoor advertising in accordance with the Federal Highway Beautification Act, 23 U.S.C. § 131.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

The basic zoning, size, lighting, and spacing standards for outdoor advertising devices located adjacent to state highways on the interstate and other primary federal-aid systems are established in the Federal Highway Beautification Act, 23 U.S.C. § 131, and in the agreements between TDOT and the Federal Highway Administration, as authorized in State law (see T.C.A. § 54-21-113). These standards must be uniformly applied to all firms and individuals engaged in outdoor advertising across the State in order to provide for the effective control of outdoor advertising as required by Federal law. Similarly, the additional spacing and operational requirements for outdoor advertising devices with digital displays are set in State law (see T.C.A. § 54-21-119). Finally, the application fees and other administrative fees for outdoor advertising devices and vegetation control permits are established by State law (see discussion in Section (2) above). There is no authority in State or Federal law to exempt small businesses from any of these standards, requirements, or fees.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

Statement of Tennessee Department of Transportation

The purpose of the proposed rules is to implement and enforce the Outdoor Advertising Control Act of 2020, T.C.A. § 54-21-101, et seq., and provide for the effective control of outdoor advertising adjacent to the interstate and primary federal-aid state highway system as required under the Federal Highway Beautification Act, 23 U.S.C. § 131. The proposed rules do not apply to or govern any separate ordinances or rules for the regulation of outdoor advertising by local governments, and they have no financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

See attached Summary of Rulemaking Hearing Rules, with attached redline of Chapter 1680-06-03, Control of Outdoor Advertising, as amended by these proposed rule amendments.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 54-21-111 directs the Commissioner of Transportation to promulgate and enforce rules as necessary to carry out Tennessee Code Annotated, Title 54, Chapter 21 (the Outdoor Advertising Control Act of 2020) and 23 U.S.C. § 131 (the Federal Highway Beautification Act). The Federal Highway Beautification Act directs States to provide for the "effective control" of outdoor advertising adjacent to Interstate Highways and other highways on the primary federal-aid highway system, subject to the withholding of 10% of a State's apportioned federal-aid highway funding for failure to provide effective control. To provide for such effective control, the Federal Highway Administration (FHWA) requires States to develop regulations and enforcement procedures for the control of outdoor advertising, consistent with 23 U.S.C. § 131, FHWA's rules (see 23 CFR Part 750), and the zoning, size, lighting, and spacing criteria established in the agreement between the State and FHWA. 23 CFR § 750.705. The current agreements between TDOT and FHWA that establish the basic zoning, size, lighting, and spacing criteria for outdoor advertising along the regulated highways in Tennessee, as authorized in T.C.A. § 54-21-113, are included in the Appendix to the proposed rules at Rule 1680-06-03-.09(1).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons or entities most directly affected by these proposed rules are the business firms or individuals who erect, maintain, and operate outdoor advertising devices adjacent to state highways on the Interstate and other primary federal-aid systems of highways. TDOT has held two separate public hearings on the proposed rules and has received extensive comments from the Outdoor Advertising Association of Tennessee (OAAT) and other representatives of the outdoor advertising and on-premises/business sign industries, as well as comments from Scenic Tennessee, which have been supportive in part and critical in part. In addition, TDOT has had a series of meetings with OAAT representatives to discuss their specific comments and concerns in detail, and TDOT has made numerous revisions to the proposed rules in response. We believe the proposed rules, as further revised, are generally acceptable to OAAT. The final draft of the proposed rules has been shared with OAAT, Scenic Tennessee, and others, and it has been posted on TDOT's public website. TDOT has not received any negative feedback.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

In *Thomas v. Bright*, 937 F.3d 721 (U.S. 6th Circuit Court of Appeals; September 11, 2019), the United States Sixth Circuit Court of Appeals held that the provisions of the Tennessee Billboard Regulation and Control Act of 1972 exempting signs from regulation based on whether the sign advertised activities located on, or the sale or lease of, the property on which the sign is located were unconstitutional regulations of speech based on the content of the speech. In response to this ruling, the Tennessee General Assembly enacted the Outdoor Advertising Control Act of 2020 (2020 Public Chapter 706; effective June 22, 2020) (the 2020 Act). The 2020 Act removed the exemptions that had been held unconstitutional by the Sixth Circuit and replaced them with "content-neutral" exemptions, including the exemption for "on-premises devices" based on the sign's location next to a "facility" open to the public and an exemption for signs that do not exceed twenty square feet (20 sq. ft.) in the total area of the sign face. Section 54-21-111 of the 2020 Act directed TDOT to promulgate rules as needed to implement and enforce the 2020 Act and 23 U.S.C. § 131 (the Federal Highway Beautification Act). In response to that directive, TDOT submits these proposed rules as amendments to the current rules for the

control of outdoor advertising so as to provide for the effective control of outdoor advertising.

It should be noted that the United States Supreme Court has subsequently abrogated the Sixth Circuit's ruling in the *Thomas v. Bright* case. See *City of Austin v. Reagan National Advertising of Austin, Inc.*, 142 S.Ct. 1464, 2022 WL 1177494 (U.S. Sup. Ct., April 21, 2022).

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

The promulgation of these proposed rules will not have any impact on state or local government revenues, and no impact on local government expenditures.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

John H. Reinbold, General Counsel

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

John H. Reinbold, General Counsel; Brian Carroll, Senior Associate Counsel; Jay Klein, Legislative Director

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

John H. Reinbold, General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; email address John.Reinbold@tn.gov.

Brian Carroll, Senior Associate Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; email address Brian.Carroll@tn.gov.

Jay Klein, Legislative Director, Tennessee Department of Transportation, Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 406-1046; email address Jay.Klein@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None at this time.

Rulemaking Hearing Rules
of the Tennessee Department of Transportation
Right of Way Division

Chapter 1680-02-03 [Chapter 1680-06-03 as amended]
Control of Outdoor Advertising

Responses to Public Comments

I. INTRODUCTION

Effective on June 22, 2020, Public Chapter 706 amended Title 54, Chapter 21, of the Tennessee Code to enact the "Outdoor Advertising and Control Act of 2020" (also referred to hereinafter as the "2020 Act"). T.C.A. § 54-21-111 authorized and directed the Commissioner, within sixty (60) days after the effective date of the 2020 Act, to "begin promulgating and enforcing only those rules as necessary to carry out this chapter and 23 U.S.C. § 131."[1] Accordingly, on August 21, 2020, the Tennessee Department of Transportation ("TDOT") filed a notice of rulemaking hearing with the Secretary of State to begin the process of promulgating proposed amendments to Chapter 1680-02-03, Control of Outdoor Advertising, which will be renumbered as rule chapter 1680-06-03.[2]

TDOT solicited written comments and held a public rulemaking hearing on November 4, 2020, to receive public comment on the proposed revisions to Chapter 1680-02-03. A copy of the transcript of the public hearing is available for inspection at TDOT by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov. At the public hearing, TDOT agreed to extend the time for receiving public comments to December 4, 2020, and TDOT did receive additional written comments.

Upon reviewing the public comments regarding the proposed rules presented at the November 4, 2020, public hearing, TDOT prepared written Responses to Public Comments (hereinafter referred to as the "Responses to 11/4/2020 Public Hearing"), a copy of which is available for inspection at TDOT by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov. TDOT made numerous revisions to the proposed rules in response to the comments and then filed a new Notice of Rulemaking Hearing on September 3, 2021, incorporating these revisions. The proposed rules, as revised, were presented at a public hearing on October 27, 2021, and additional public comments were received. A copy of the transcript of the public hearing is available for inspection at TDOT by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov.

II. SUMMARY OF COMMENTS AND RESPONSES

In accordance with T.C.A. § 4-5-222 and Tennessee Department of State Rule 1360-01-02-.05(1), TDOT summarizes the written comments received in connection with the public rulemaking hearing held on October 27, 2021, and provides the following responses to these comments. The

[1] T.C.A. § 54-21-111 was further amended in 2023 Public Chapter 63 to delete the previous requirement that the rules establish procedures for accepting and resolving written complaints. As amended, T.C.A. § 54-21-111 simply states that "The commissioner shall promulgate and enforce rules necessary to carry out this chapter and 23 U.S.C. § 131."

[2] When the proposed rules were put on public notice, the TDOT office responsible for administering the outdoor advertising control program was under TDOT's Environmental Division, and accordingly it was proposed to reassign the rules to a new control number as Rule Chapter 1680-11-01. It has subsequently been decided to place outdoor advertising control under TDOT's Right of Way Division. Accordingly, the proposed rules have been assigned a control number under that division, 1680-06-03. The references to the proposed rules in these Responses to Comments have been renumbered accordingly.

comments and responses are organized sequentially by rule number as identified in the new rule chapter 1680-06-03.

General Comments:

1. The Outdoor Advertising Association of Tennessee ("OAAT")[3] submitted the following general comments on the proposed rules:

    a. OAAT notes that much of content of the proposed rules has been copied from statutory provisions, which OAAT believes is unnecessary and will require future rule amendments when the statutes are amended, and OAAT suggests referencing code sections in the rules as an alternative.

    Response: TDOT believes that incorporating applicable language from the Tennessee Code into the rules, and thereby compiling the applicable regulatory provisions into one document, will make it more convenient for interested parties to find, read, research, and understand the regulations. TDOT acknowledges that this may require technical amendments to the rules from time to time to keep them up to date with the applicable statutory provisions.

    b. OAAT suggests that it has identified conflicts between the statute and the rules and requests a statement in the rules that where a conflict exists between the rules and the statute the statute would take precedence.

    Response: TDOT does not believe the proposed rules are in conflict with the statute, and since OAAT does not provide any specific instances where it believes it has identified a conflict between the statute and the proposed rules, TDOT is unable to provide a more specific response. TDOT believes it is appropriate to supplement statutory definitions or other statutory provisions in the rules to make appropriate clarifications or to add details on how regulatory criteria are to be applied, so long as the additional language in the rules serves to implement the regulatory purpose of the statute and the applicable requirements of federal law. In the Preface, the proposed rules expressly state that the purpose of the rules is to "implement and enforce the Outdoor Advertising Control Act of 2020 . . . so as to provide for effective control of outdoor advertising devices . . . in accordance with and as required by 23 U.S.C. § 131." This seems a sufficient acknowledgment that the statutes, both state and federal, take precedence over the rules.

2. Mr. Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region), submitted the following general comments regarding the proposed rules,

[3] Holly Kirby, JohnsonPossKirby Government Relations, submitted written comments on behalf of OAAT via email on October 27, 2021. Several other individuals submitted written comments attaching and/or endorsing OAAT's comments, including Denise C. Shewmake, Regional Manager, Lamar Advertising Company Central Region; Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region); Scott Yadan, Regional Real Estate Director, Lamar Advertising Company; David Easterling, VP/General Manager, Lamar Advertising Co. (Clarksville); Larry Quas, Real Estate Manager, Lamar-Memphis; Michelle Millard, VP/General Manager, Lamar-Memphis; Tim Willis, Real Estate Director/Operations Manager, Lamar Advertising of Jackson; Keith Maupin, Asst. General Manager, Lamar Advertising Co. of Knoxville; Steve Harris, Senior Real Estate Manager, Lamar Advertising Co. of Nashville; Keith Beery, General Manager/Vice President, Lamar of Knoxville; Jimmy Collins, VP/General Manager, Lamar Advertising Co. (Tri-Cities); Blake Allred, Real Estate Manager, Lamar Advertising Co. (Nashville); Melissa Sutherland, Real Estate Manager, Lamar of Knoxville; Cody Walker, Real Estate Manager, Lamar of Clarksville; Mark Miller, Sales Manager, Lamar Tri-Cities; Tom Flynn, Flynn Sign Co., Inc.; Martin Daniel, Owner/Manager, Elevation Outdoor Advertising, LLC; Dave Roland, President, Roland Digital Media, Inc.; and Hugh Morrow, President & CEO, Ruby Falls.

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which substantially repeat comments Mr. Rush submitted on November 4, 2020, regarding the originally proposed rules:

a. Mr. Rush again expresses concern that TDOT did not properly implement the directive in T.C.A. § 54-21-111 to begin promulgating and enforcing the rules necessary to carry out the 2020 Act within sixty (60) days of its effective date, June 22, 2020, because the definition of "promulgate" means to "put into force and effect."

Response: Again, TDOT does not concur for the reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, which are incorporated herein by reference. Briefly, T.C.A. § 54-21-111 directs TDOT to begin promulgating rules within 60 days. It does not direct TDOT to complete the promulgation of the rules within 60 days, and it would have been impossible to do so in compliance with the statutory processes set out for promulgating rules under the Uniform Administrative Procedures Act. Meanwhile, pending the final promulgation of the proposed rules, TDOT continues to enforce the current outdoor advertising regulations as necessary to carry out the 2020 Act.

b. Mr. Rush again asks why TDOT has chosen to do a complete rewrite and recodification of the rules "without providing any justification and analysis behind the proposed rules."

Response: As previously explained in TDOT's Responses to 11/4/2020 Public Hearing, the Uniform Administrative Procedures Act ("UAPA"), does not require a state agency to provide a "justification and analysis behind the proposed rules" before the public hearing is held. The UAPA does require the state agency to provide a written response to the comments submitted at the public hearing, including the reasons for the agency's adoption or rejection of any specific changes suggested in the comments. T.C.A. § 4-5-222(a). TDOT's "justification and analysis behind the proposed rules" is provided in these Responses to Public Comments, including the previous Responses to 11/4/2020 Public Hearing, which are incorporated herein by reference.

c. Mr. Rush again asks why TDOT has incorporated statutory verbiage verbatim into the proposed rules rather than referencing the T.C.A. sections and suggests that this will necessitate a rule revision every time the T.C.A. is changed.

Response: Again, TDOT believes that incorporating applicable language from the Tennessee Code into the rules, and thereby compiling the applicable regulatory provisions into one document, will make it more convenient for interested parties to find, read, research, and understand the regulations. TDOT acknowledges that this may require technical amendments to the rules from time to time to keep them up to date with the applicable statutory provisions.

3. Scenic Tennessee objects generally that the proposed rules provide too many accommodations and give too much leniency to the outdoor advertising industry, which Scenic Tennessee believes will impose an unreasonable burden on TDOT's staff and unreasonable new costs on taxpayers that are not offset by any increase in fees. As a specific example, Scenic Tennessee cites the provision in proposed Rule 1680-06-03-.04(2)(b) giving an applicant for an outdoor advertisement the opportunity to cure an incomplete or defective application. Further, Scenic Tennessee expresses its belief that placing outdoor advertising devices along public highways is a privilege, not a right, and that the value of this privilege should be reflected in the stringency of the restrictions.

Response: TDOT's reasons for making additional revisions in the proposed rules, in response to comments from representatives of the outdoor advertising industry and others, are set forth in TDOT's Responses to 11/4/2020 Public Hearing, which are incorporated herein by reference. (TDOT's response to Scenic Tennessee's specific comment about the provision in proposed Rule 1680-06-03-.04(2)(b) giving an applicant the opportunity to

cure an incomplete or defective application is found in the discussion of that rule below.) TDOT does not believe that the proposed revisions to the rules will impose significant new burdens on TDOT's staff or cause TDOT to incur substantial new costs in administering the outdoor advertising control program. Finally, TDOT does not believe it is accurate to describe the placement of outdoor advertising devices along public highways as a privilege rather than a right. The outdoor advertising devices subject to regulation under the 2020 Act and TDOT's regulations are not located within the public highway rights-of-way but are instead located on private property in the adjacent area of the interstate and primary highway system of the State of Tennessee. TDOT acknowledges that the 2020 Act and these regulations impact the rights of private property owners and, because outdoor advertising devices are a medium for the expression of speech, the regulations also impact the rights to freedom of speech that are protected under the First and Fourteenth Amendments to the United States Constitution. However, TDOT believes that the 2020 Act and TDOT's proposed rules establish constitutionally valid content-neutral time, place, and manner regulations of speech.

Rule 1680-06-03-.02 – Definitions.

1680-06-03-.02(1) "Abandoned outdoor advertising device"

Comment: OAAT again expresses a concern that the definition of "abandoned outdoor advertising device" is not found in the 2020 Act and is not similar to legal definitions of "abandoned" or "abandonment" found in property law, for which OAAT cites *Lamar Advertising Co. v. Town of Farragut*, 1986 WL 2639 (Tenn. Ct. App. 1986).

Response: First, TDOT does not believe the *Lamar Advertising Co. v. Town of Farragut* case is applicable or controlling with respect to the validity of TDOT's rule regarding abandoned outdoor advertising devices. In that case, the issue was whether the fact that the sign face of the device had been left blank for a period of time would constitute an abandonment of Lamar's leasehold interest for the purpose of terminating the use of the land for outdoor advertising as a nonconforming business under T.C.A. § 13-7-208. This statute establishes conditions under which pre-existing businesses may be allowed to continue operating as nonconforming land uses under local zoning ordinances. However, the statute does not apply to TDOT's permitting or regulation of outdoor advertising devices under the 2020 Act or its predecessor. *Universal Outdoor, Inc. v. Tennessee Department of Transportation*, 2008 WL 4367555 (Tenn. Ct. App. 2008).

The requirement to have a rule establishing criteria for the removal of "abandoned outdoor advertising devices" derives from the rules of the Federal Highway Administration (FHWA) in 23 CFR § 750.707. This FHWA rule establishes the conditions under which States are authorized to permit nonconforming devices that were lawful when erected to remain in their original location. Among other restrictions, 23 CFR § 750.707(d)(6) provides that a nonconforming device "may continue as long as it is not destroyed, abandoned, or discontinued." This rule further directs that:

> (i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.
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> (ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated

> and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

Although the "abandoned outdoor advertising device" definition originated as a rule applicable to nonconforming devices, the current definition of "abandoned outdoor advertising device" in Rule 1680-03-02-.02(1) applying it to all permitted outdoor advertising devices has been in effect since 1989. The purpose of the definition is to identify devices that are subject to removal under Rule 1680-03-02-.07 [to be renumbered as Rule 1680-06-03-.07]. Providing a process for removing outdoor advertising devices that are no longer being used, as evidenced by the fact that the device remains in substantial disrepair or has had no advertising message for a period of twelve (12) months, as provided in subparagraphs (a) – (c) of the proposed definition, serves the goal of 23 U.S.C. § 131(a) to "promote the safety and recreational value of public travel, and to preserve natural beauty" irrespective of whether the abandoned device is conforming or nonconforming. Further, revoking the permit of a conforming device that is no longer being used, or the permit of a conforming device that has been removed and not reconstructed after twelve (12) months as provided in subparagraph (d) of the proposed rule, helps the TDOT Outdoor Advertising Office maintain an accurate inventory of all permitted devices and opens potentially permittable locations to other outdoor advertising firms. As far as TDOT is aware, the abandonment rule has been applied to all outdoor advertising devices for more than thirty (30) years without any substantial controversy. Accordingly, TDOT proposes to continue administering the rule in substantially the same manner.

However, as noted in TDOT's Responses to 11/4/2020 Public Hearing, the proposed definition will provide objective criteria for determining when a device is "in substantial need of repair" under subparagraph (a), and abandonment based on the discontinuance of advertising will apply only if the sign face has remained blank for twelve (12) months, as provided in subparagraph (b). Further, after additional consideration and for consistency of administration, TDOT will further amend the final rule to align the standards for finding a device "in substantial need of repair" with the criteria for defining a "destroyed" nonconforming device. TDOT will also provide for a waiver of the 12-month period for establishing abandonment where there has been an involuntary discontinuance such as a closing of the highway for repair in front of the device, as provided in the FHWA rule. Finally, some additional clarifications will be to subparagraphs (b) and (c) so that as revised the definition of "abandoned outdoor advertising device" in the final rule will be as follows:

(1) "Abandoned outdoor advertising device" means any regulated outdoor advertising device that for a twelve-month period falls into one or more of the following classifications:

  (a) A device in substantial need of repair, which means that, in the case of wooden sign structures, sixty percent (60%) or more of the upright poles or supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support; provided, however, that a nonconforming device in a condition meeting these criteria will immediately be considered destroyed rather than abandoned;

  (b) A device whose sign face remains damaged fifty percent (50%) or more, or in the case of a device with multiple sign faces, each sign face that remains damaged fifty percent (50%) or more;

  (c) A device with a blank sign face (i.e., no advertising message), or in the case of a device with multiple sign faces, each sign face that remains blank; or

(d) A device that has been removed and has not been reconstructed in its permitted location; provided, however, that a nonconforming device that has been removed will immediately be considered destroyed rather than abandoned.

(e) The twelve-month period for establishing abandonment under subparagraphs (a) – (d) may be waived or suspended during a period of involuntary discontinuance, such as the closing of a highway for repair in front of the sign; provided, however, that the termination of the permit holder's lease, easement, or other right or permission for access from the landowner shall not be grounds for waiver of the twelve-month time period for establishing abandonment.

(See illustrations in Rule 1680-06-03-.09, Appendix.)

Proposed Rule 1680-06-03-.07, Removal of Abandoned Devices, will also be modified in the final rule consistent with the revisions to the definition of "abandoned outdoor advertising device."

1680-06-03-.02(2) "Adjacent area"

Comment: OAAT requests that the Department incorporate "main traveled way" instead of "right of way" in the definition of "adjacent area" because "main traveled way" is a defined term in the 2020 Act and the proposed rules.

Response: TDOT does not concur in changing the definition. The definition of "adjacent area" in the proposed rules is identical to the definition of "adjacent area" in the 2020 Act. See at T.C.A. § 54-21-102(1). In turn, the definition of "adjacent area" in the 2020 Act derives from the requirement in the Federal Highway Beautification Act that the States are to provide for "effective control" of outdoor advertising devices "which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the [Interstate or primary highway] system." 23 U.S.C. § 131(b). However, TDOT does believe it is appropriate to establish a clear and consistent standard for measuring the "adjacent area" at interchanges on controlled access highways, where the right-of-way extends outward irregularly from the normal width, by adopting a standard 100-foot distance from the main traveled way as the line from which to begin measuring the 660 feet within the "adjacent area" of the highway at the interchanges. See discussion at Rule 1680-06-03-.03 below.

1680-06-03-.02(21) "Nonconforming"

Comment: OAAT again notes that the definition of "nonconforming" does not contain any reference to signs erected or modified during the period when TDOT suspended administration of the outdoor advertising regulations after the Sixth Circuit Court of Appeals ruling in *Thomas v. Bright* on September 11, 2019, until the 2020 Act became effective on June 22, 2020. OAAT suggests that including a reference to these signs in the definition would make it clear that these signs are eligible for a permit, either as conforming or nonconforming devices.

Response: Again, as previously stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT does not believe any additional language is needed in the definition in order to accomplish this purpose. The definition of "nonconforming" in the proposed rule is identical to the definition stated in the 2020 Act. The purpose of the definition is to describe the criteria that will determine whether an outdoor advertising device is to be characterized as "conforming" or "nonconforming" rather than to prescribe the process for applying these criteria to particular categories of devices. The outdoor advertising devices erected or modified between September 11, 2019, and June 20, 2020, are not necessarily, or by

definition, deemed to be nonconforming devices. Instead, the 2020 Act provides in T.C.A. §§ 54-21-104(a)(3) and (b)(2) that outdoor advertising devices erected or modified during this period are required to obtain a permit and will be characterized as either conforming or nonconforming devices in accordance with the procedures established in T.C.A. § 54-21-104(b)(2). A similar process applies to previously permitted devices that were upgraded to a changeable message sign with a digital display during the same period. T.C.A. § 54-21-104(b)(3). The proposed rules address the processing of applications for devices erected or modified during this period, including the process for characterizing the devices as conforming or nonconforming for regulatory purposes, in Rule 1680-06-03-.04(2)(s), and the proposed rules address permit addendum requirements for digital upgrades made during this time period in Rule 1680-06-03-.04(3)(b).

1680-06-03-.02(23) "On-premises device"

Comment: Scenic Tennessee expresses concern that the revised definition of "on-premises device" (i.e., as signs for which compensation is not being received from a third party) will result in abuses of the intent of the Federal Highway Beautification Act and violation of Tennessee's requirement to provide "effective control."

Response: TDOT does not concur. As previously explained in TDOT's Responses to 11/4/2020 Public Hearing, TDOT agreed to add the clarification to the definition of "on-premises device" to avoid treating an otherwise exempt sign as a regulated outdoor advertising device merely because the facility on which the sign is located pays a sign company to lease the use of the sign but does not use the sign to receive compensation from any third party to display the third party's messages on the sign. This clarification is consistent with the 2020 Act, under which a sign is categorized as a regulated "outdoor advertising device" based on the payment of compensation only if the owner or operator of the sign earns compensation "directly or indirectly from a third party or parties for the placement of a message on the sign." T.C.A. § 54-21-102(18)(B).

1680-06-03-.02(25) "Outdoor advertising device"

Comment: OAAT again requests a justification for adding the clause in subparagraph (b) stating that the definition of "outdoor advertising device" "does include any other sign not specifically exempted from regulation under the Act to the extent required under federal law" and examples of the types of devices that would be regulated under this additional language.

Response: The purpose of defining the term "outdoor advertising device" is to identify the categories of "signs" [as defined in T.C.A. § 54-21-102(22) and these rules] that are subject to regulation under Title 54, Chapter 21, of the Tennessee Code (the Outdoor Advertising Control Act of 2020). By itself, the statutory definition of "outdoor advertising device" in T.C.A. § 54-21-102(18) is incomplete and ambiguous. The statutory definition provides in subparagraph (a) that the term "outdoor advertising device" means any "sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign" and then states in subparagraph (b) that the term outdoor advertising device "Does not include a sign that is an on-premises device or other type of sign exempt from regulation under Title 54, Chapter 21, of the Tennessee Code." The categories of signs that are exempted from regulation are set out in T.C.A. § 54-21-103(b). These include, but are not limited to, on-premises devices, which must be located within fifty feet (50') of, and on the same property as, a "facility" open to the public [see definition of "on-premises device at T.C.A. § 54-21-102(17) and definition of "facility" at T.C.A. § 54-21-102(12)], and signs that do not exceed twenty

square feet (20 sq. ft.) in area.[4] The statutory definition of "outdoor advertising device" is incomplete because it does not say how to characterize signs that are not operated to earn compensation for the display of messages but also do not meet the location, size, or other criteria required to be exempted from regulation. Logically, any sign not exempted from regulation must be subject to regulation. There cannot be a third category of signs that are neither regulated nor exempted from regulation. Further, as discussed below, it is clear that regulating only signs that earn compensation for the display of messages is not sufficient to provide for the effective control of outdoor advertising as required in federal law. T.C.A. § 54-21-111 expressly directs that "The commissioner shall promulgate and enforce rules necessary to carry out this chapter and 23 U.S.C. § 131." (Emphasis added.) Accordingly, TDOT believes it is appropriate to supplement the statutory definition of "outdoor advertising device" in the rule to clarify that TDOT's obligation to regulate "signs" is not limited to those signs that are operated to earn compensation but must also include any other type of sign that TDOT is required to regulate in order to provide for the effective control of outdoor advertising signs under 23 U.S.C. § 131.

In 23 U.S.C. § 131(a), the Federal Highway Beautification Act declares that outdoor advertising "signs"[5] must be controlled in areas adjacent to the interstate and primary federal-aid highway systems "in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." To accomplish these purposes, 23 U.S.C. § 131(b) directs that any State failing to provide for the "effective control" of outdoor advertising signs within 660 feet of the right-of-way[6] and visible from the main traveled way of highways on the interstate or primary system will have its annual apportionment of federal highway funds reduced by ten percent (10%).[7] Per 23 U.S.C. § 131(c), "effective control" means generally that the States may allow only certain limited categories of signs within the adjacent areas of interstate and primary highways, including: (1) directional and official signs and notices, (2) signs advertising the sale or lease of property upon which they are located, (3) signs advertising activities conducted on the property on which they are located, (4) landmark signs, and (5) signs advertising the distribution of free coffee by nonprofit organizations. Otherwise, per 23 U.S.C. § 131(d), all other signs are subject to regulation and may only be permitted in commercial or industrial areas (zoned or unzoned) in accordance with the size, lighting, and spacing standards adopted by agreement between each State and the U.S. Secretary

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[4] Specifically, T.C.A. § 54-21-103(b) provides as follows:

(b) The following types of signs are not subject to regulation as outdoor advertising devices under subsection (a):
(1) Official signs and notices, including directional signs, authorized or required by law;
(2) On-premises devices;
(3) Signs other than outdoor advertising devices that:
(A) Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area; and
(B) Do not contain any flashing, intermittent, or moving lights;
(4) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and
(5) Utility signs.

[5] Per the Federal Highway Administration's outdoor advertising regulations, the term "sign" is defined very broadly as any "outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation." 23 CFR § 750.703(i). In T.C.A. § 54-21-102(22), the Outdoor Advertising Control Act of 2020 defines "sign" in nearly identical terms as any "outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of an interstate system or primary system."

[6] Signs located beyond 660 feet of the highway right-of-way outside of urban areas are also subject to regulation if erected for the purpose of having their messages read from the main traveled way of an interstate or primary highway. See 23 U.S.C. § 131(c) and T.C.A. § 54-21-108(a).

[7] The State of Tennessee currently receives about $1.2 B in its annual apportionment of federal highway funds. Accordingly, the failure to provide for effective control of outdoor advertising signs as required under 23 U.S.C. § 131 would subject Tennessee to the loss of about $120,000,000 in federal-aid funding each year.

of Transportation. Obviously, in federal law, the primary factor to consider in determining whether a regulated sign may be permitted or not is the sign's location (zoning and spacing). Further, two of the categories of signs that are exempted from regulation are also location-dependent, i.e., on-property or on-premises signs that advertise the sale or lease of the property where the sign is located or signs that advertise activities conducted on the property where the sign is located. Whether a sign is operated to receive compensation for displaying outdoor advertising messages is not identified anywhere in 23 U.S.C. § 131 as a criterion for determining whether a sign should be regulated or not. In federal law, the receipt of compensation is only a secondary consideration. That is, a sign that may otherwise be considered exempt from regulation as an on-property or on-premises sign will be subject to regulation if the sign brings rental income to the property owner. See 23 CFR § 750.709(b).

Because the purpose of the Outdoor Advertising Control Act of 2020 is to provide for the "effective control" of outdoor advertising signs as required under 23 U.S.C. § 131, the scope of regulation in the state law is structured in the same way as in the federal law. First (as noted in footnote 5), the definition of "sign" in T.C.A. § 54-21-102(22) is nearly identical to the definition of "sign" in federal law. Second, just as the federal law in 23 U.S.C. § 131(c) identifies certain categories of signs that may be allowed without being subject to regulation, so too does T.C.A. § 54-21-103(b) identify categories of signs that are not subject to regulation as outdoor advertising devices (see footnote 4). Finally, just as 23 U.S.C. § 131(d) provides that all other outdoor advertising signs must be restricted to commercial or industrial areas and subject to the additional size, lighting, and spacing standards adopted by agreement between each State and the U.S. Secretary of Transportation, so too does T.C.A. § 54-21-103(a) require that outdoor advertising devices located within 660 feet of the right-of-way of, and visible to, interstate or primary highways must be restricted to commercial or industrial areas (zoned or unzoned) and must meet the size, lighting, and spacing standards established by agreement between the State of Tennessee and the U.S. Secretary of Transportation. See also 23 U.S.C. § 131(c) and T.C.A. § 54-21-108 (outdoor advertising devices located beyond 660 feet of the right-of-way outside of urban areas are subject to the same regulations if erected for the purpose of having their messages read from the main traveled way of an interstate or primary highway).

The purpose of the on-premises and small sign exemptions in T.C.A. § 54-21-103(b) is to restate these categories of exempted signs in a "content-neutral" manner consistent with the previous ruling of the United States Sixth Circuit Court of Appeals.[8] Rather than relying on whether the message advertises activities conducted on the same property, the definition of an "on-premises device" in T.C.A. § 54-21-102(17) is defined by its location within 50 feet (50') of, and on the same property as, a "facility" open to the public, as "facility" is defined in T.C.A. § 54-21-102(12). Further, as provided in T.C.A. § 54-21-

[8] In *Thomas v. Bright*, 937 F.3d 721 (U.S. 6th Circuit Court of Appeals; September 11, 2019), the United States Sixth Circuit Court of Appeals held that the provisions of the Tennessee Billboard Regulation and Control Act of 1972 exempting on-premises devices from regulation based on whether the sign advertised activities located on, or the sale or lease of, the property on which the sign is located were unconstitutional regulations of speech based on the content of the speech. These exemptions for signs advertising activities on the property or the sale or lease of the property on which the sign is located came directly from 23 U.S.C. § 131(c). The United States Supreme Court has since addressed the constitutionality of these same exemptions for on-premises signs in *City of Austin v. Reagan National Advertising of Austin, Inc.*, 142 S.Ct. 1464, 2022 WL 1177494 (U.S. Sup. Ct., April 21, 2022). In that case, the United States Fifth Circuit Court of Appeals had held, citing the Sixth Circuit's ruling in *Thomas v. Bright*, that the city's sign ordinance was a facially unconstitutional content-based regulation of speech because the city ordinance, in the same manner as in 23 U.S.C. § 131(c), distinguished between "on-premises" and "off-premises" signs based on whether the sign is located on the same premises as the thing being discussed. In reversing the Fifth Circuit, the Supreme Court expressly rejected the reasoning of the Sixth Circuit in *Thomas v. Bright* that a regulation of speech is necessarily content-based if one must read the sign's message to determine whether it is an on-premises sign or an off-premises sign. The Supreme Court held instead that the city's distinction between on-premises and off-premises signs based on whether the sign is located on the same premises as the thing discussed in the message is a location-based regulation of speech that is facially content-neutral.

102(17)(b), an on-premises device cannot be used to earn compensation, just as federal law prohibits an on-premises device from being used to obtain rental income, per 23 CRF § 750.709(b). Similarly, rather than relying on whether the message on a sign advertises that the property on which it is located is for sale or lease, the small sign exemption identified in T.C.A. § 54-21-103(b)(3) will cover most real estate broker signs as well as other common types of yard signs.

In sum, if the definition of "outdoor advertising device" were to be construed, erroneously, to apply only to signs that are operated to earn compensation from others for the display of messages on the sign, it would render the exemptions identified in T.C.A. § 54-21-103(b) meaningless, and it would fail to provide for the effective control of outdoor advertising as required under federal law. If the earning of compensation for the display of messages were the only controlling factor for regulating a sign there would be nothing to prevent any person from erecting any sign of any size anywhere without respect to zoning, spacing, or lighting restrictions of any kind so long as the person erecting the sign does not use the sign to earn compensation for displaying someone else's messages. For example, instead of paying an outdoor advertising company to display advertisements on a permitted outdoor advertising device, a business owner could purchase or lease signs from a sign vendor and erect the signs along a highway in any location to advertise the owner's business down the road. The signs could be located in residential areas or agricultural areas, they could be digital or non-digital, they could be of any size and without any restrictions on spacing – all to the comparative disadvantage of the outdoor advertising industry – and there would be nothing in the law to prevent it so long as the owner of the sign does not use it to earn compensation for displaying someone else's messages. The 2020 Act does not contemplate such a result, and it certainly would not achieve the effective control of outdoor advertising as required under federal law.

To make it clear that the additional language is supplemental to the statutory definition, however, the added language will be separated into a new subparagraph (c), so that as amended the definition will appear as follows:

(25) "Outdoor advertising device":

(a) Means a sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign; and

(b) Does not include a sign that is an on-premises device or other type of sign exempt from regulation under Title 54, Chapter 21, of the Tennessee Code; and

(c) Does include any other sign the Department is required to regulate to provide for the effective control of outdoor advertising in accordance with 23 U.S.C. § 131 and as further provided in Title 54, Chapter 21, of the Tennessee Code.

1680-06-03-.02(31) "Sign"

Comments: OAAT again comments that definitions found in the statute do not need to be restated or unnecessarily expanded in the rules and asks the intent of the added clause in the proposed rule stating "except, however, that a building or structure having a primary function at its location other than to advertise or inform will not be considered a 'sign' solely because words or figures, etc., are displayed on its exterior surface, unless the owner or operator is earning compensation directly or indirectly from a third party or parties for the placement of any message on the exterior of the building or structure, and provided that this exception shall not apply to any separate sign structure or sign face that is attached to the building or structure." OAAT concludes that this added clause is unnecessary and should be removed from the proposed rules.

Response: As previously explained, TDOT believes it is appropriate and helpful to include statutory definitions and provisions in the rules. The intent of the clause added to the statutory definition of "sign" is to clarify that a building, structure, or object that has a primary function other than outdoor advertising in its location will not be treated as an outdoor advertising device merely because words or figures of some kind may be displayed on its exterior surface. Two very common examples of this are water towers and barns. Water towers are located where they are to serve utility customers; barns are located where they are to shelter livestock, equipment, etc. Water towers typically contain the name of the city where they are located and sometimes a municipal slogan or the like. Barns often contain the name of the farm or provide other information about farm products or the like. In the past, displays of this kind on such buildings or structures would have been treated as on-premises advertising based on the purpose of the message to advertise activities conducted on the property. Under the 2020 Act, however, the exemption for on-premises devices is based on their location adjacent to a "facility" open to the public on a regular schedule, not the content of the message on the sign. A typical water tower or barn would not qualify as a "facility" open to the public. However, TDOT does not believe it is the intent of the 2020 Act, or of 23 U.S.C. § 131, to regulate functioning water towers and barns or the like as outdoor advertising devices except in cases where the owner actively operates it as an outdoor advertising device by selling advertising space to another party. In any event, TDOT has no practical ability to regulate the size, lighting, or spacing of water towers, barns, or similar buildings or structures that have a primary function other than outdoor advertising but may happen to display words or figures of some kind on their exterior surfaces.[9] Accordingly, TDOT believes it is appropriate to add the proposed clarification to the definition of "sign" to explain why these types of buildings, structures, or objects are not regulated but to do so in a way that does not depend on the content of any words or figures displayed on the buildings, structures, or objects. However, the exclusion of such buildings, structures, or objects from the definition of "sign" does not apply to any separate sign structure or sign face erected on or adjacent to these buildings, structures, or objects. These would be considered "signs" subject to regulation as outdoor advertising devices unless they fall under one of the exemptions identified in T.C.A. § 54-21-103(b).

1680-06-03-.02(32) "Sign face"

Comments: OAAT notes that this definition is not included in the 2020 Act. OAAT requests that TDOT retain the provision in the current rule regarding the measurement of the sign size [see current Rule 1680-02-03-.03(1)(a)(2)(ii)], which states that that "The area shall be measured by the smallest square, rectangle, circle, or combination thereof which will encompass the entire sign." In any event, OAAT requests a reasonable compromise to allow for advertising embellishments extending beyond the normal sign face without including all embellishments and the sign face together in a single measurement of a square, rectangle, or circle.

Response: The term "sign face" is used in the 2020 Act [see, e.g., T.C.A. § 54-21-103(b)(3)(A)], and therefore TDOT believes it is appropriate to define the term in the rules. TDOT agrees that the definition can be modified to allow a reasonable accommodation for advertising embellishments outside the normal sign face so long as the total area in which advertising content is displayed does not exceed the maximum size allowed for a permitted

[9] It should be noted, however, that if a building, structure, or object that is not normally used for outdoor advertising purposes is actually being used in a particular location to function primarily as a means to advertise or inform rather than for its normally intended purpose, then it would be characterized as a "sign" subject to regulation as an outdoor advertising device unless it meets one of the statutory exceptions. An example would be a prefabricated swimming pool that, instead of being filled with water and functioning as a pool, is turned on its side in a field adjacent to the highway right-of-way and used to display a written message of some kind. Another example would be an otherwise unused semi-trailer parked adjacent to the highway right-of-way with a message draped over its side. Many more examples could be given but it would be impossible to provide an exhaustive list.

outdoor advertising device, and TDOT had intended to provide for this in its proposed revision to the definition. However, it is apparent that the clause stating that the area of the sign face shall be measured by the "smallest single measurement" of a square, triangle, or circle, or combination thereof, is creating confusion and should be deleted to clarify the intent. Accordingly, TDOT proposes to revise the final rule to define "sign face" as follows:

> "Sign face" means the entire area of a sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed. (See illustration in Rule 1680-06-03-.09, Appendix.)

1680-06-03-.02(38) "Visible"

Comments: OAAT again comments that it is not necessary to include statutory definitions in the rules. OAAT acknowledges that the definition in the statute is copied from the Federal Highway Administration's rules but asserts that the federal rules "are only interpretive or suggestive and not binding" on the states. Finally, OAAT asserts that the definition is vague and leads to inconsistent, arbitrary enforcement by the Department, and OAAT suggests that it has examples of more objective definitions from other states and will continue to make legislative efforts to change the definition.

Response: Again, for reasons previously stated, TDOT believes it is appropriate and helpful to include statutory definitions and provisions in the rules. TDOT does not agree that the definition of "visible" in the 2020 Act, adopted verbatim from the federal rules, is vague, and OAAT does not provide any specific examples of inconsistent or arbitrary enforcement actions based on this definition to which TDOT can respond. Further, TDOT does not concur that the federal rules are only "interpretive and suggestive and not binding" on the states. To the contrary, 23 CFR § 750.701 states plainly that "This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131." (Emphasis added.)

Upon further consideration, however, TDOT does agree that the mere fact that an outdoor advertising device is "visible" from an interstate or primary highway should not by itself be a sufficient basis for deciding that the device must be regulated by TDOT. In 23 CFR § 750.705, the Federal Highway Administration identifies the various actions States must take to provide for the effective control of outdoor advertising. One of these is a directive that States shall "[e]stablish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary." 23 CFR § 750.705(f). Accordingly, in providing for the effective control of outdoor advertising under Rule 1680-06-03-.03, TDOT proposes to amend the rule to establish criteria to determine whether an outdoor advertising device has been erected with the purpose or effect of directing advertising messages to an interstate or primary highway in order to make a threshold decision as to whether the device should be regulated by TDOT. (See discussion at Rule 1680-06-03-.03(1) below.)

Rule 1680-06-03-.03 – Criteria for Erection and Control of Outdoor Advertising Devices.

1680-06-03-.03(1) – Measurement of the adjacent area

As noted above in response to the comments on the definition of "adjacent area" at Rule 1680-06-03-.02(2), TDOT believes it is appropriate to establish a consistent standard for measuring the "adjacent area" where a controlled access highway on the interstate or

primary system interchanges with a highway that is not controlled access. At these interchanges, the state highway right-of-way extends outward irregularly beyond the normal right-of-way width to accommodate exit and entrance ramps, and in many cases the state right-of-way continues on indefinitely where the interchanging highway is another state highway. Accordingly, attempting to define the "nearest edge of right-of-way" based on state right-of-way property lines creates uncertainty and potential inconsistencies in administration. Therefore, TDOT proposes to establish a consistent method for measuring the "adjacent area" by setting a standard line of 100 feet from the main traveled way as the beginning point for measuring the 660 feet outward from the highway interchange. This will be established in a new subparagraph (1)(a), as follows:

(a) Measurement of the adjacent area.

1. In general, the measurement of the adjacent area shall begin at the nearest edge of the highway right-of-way property line and continue outward six hundred and sixty feet (660'); provided, however, that:

2. Where the highway right-of-way width extends outward more than one hundred feet (100') from the main traveled way of an interstate or other controlled access highway at an interchange with another highway that is not a controlled access highway, the measurement of the adjacent area beyond the interchange will begin at a line that is one hundred feet (100') outward from, and parallel to, the outside edge line of the through lanes on the main traveled way, excluding shoulders, exit ramps, entrance ramps, and acceleration or deceleration lanes. (See illustration in Rule 1680-06-03-.09, Appendix.)

1680-06-03-.03(1) – Criteria for applying regulations based on visibility from the main traveled way

As noted above in response to the comments on the definition of "visible" at Rule 1680-06-03-.02(38), TDOT believes it is appropriate to establish criteria to determine whether an outdoor advertising device has been erected with the purpose or effect of directing advertising messages to an interstate or primary highway in order to make a threshold decision as to whether the device should be regulated by TDOT. This is based on the Federal Highway Administration directive in 23 CFR § 750.705(f) that, in providing for the effective control of outdoor advertising, States shall "[e]stablish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary." These criteria will be established in a new subparagraph (1)(b), as follows:

(b) Criteria for applying regulations based on visibility from the main traveled way.

The following criteria will be used to determine whether an outdoor advertising device located within the adjacent area of a highway on the interstate or primary system (regulated highway) should be subject to the restrictions established in this rule because the device has the purpose or effect of directing advertising messages to the main traveled way of the regulated highway:

1. In general, an outdoor advertising device within the adjacent area of a regulated highway is subject to the restrictions established in this rule if fifty percent (50%) or more of the sign face is visible from the main traveled way of the regulated highway.

2. Notwithstanding that fifty percent (50%) or more of the sign face is visible from the main traveled way of a regulated highway, the outdoor advertising device will not be subject to the restrictions applicable to the regulated highway, or it may be subject to restrictions applicable to a different regulated highway, if

any of the following factors, or combination of factors, indicate that the device does not have the purpose or effect of directing advertising messages to the main traveled way of the regulated highway:

(i) The proximate location of the device to another intersecting or parallel highway within the adjacent area of the regulated highway;

(ii) The size of the sign face in relation to the distance of the device from the regulated highway or other highway;

(iii) The orientation of the sign face by height or angle in relation to the regulated highway or other highway;

(iv) The duration of time the sign face is visible from the main traveled way to the driver or passenger of a vehicle traveling at the maximum speed on the regulated highway;

(v) The use of illumination or a digital display to attract attention to the sign face from the main traveled way of the regulated highway or other highway;

(vi) The presence of obstructions or seasonal vegetation that blocks visibility of the sign face for at least six (6) months of the year; or

(vi) Other potentially relevant factors.

3. If application of the factors in part 2 above indicates that the device does not have the purpose or effect of directing advertising messages to the main traveled way of the regulated highway, the device will not be subject to the restrictions applicable to that regulated highway, but will be subject to the restrictions applicable to another regulated highway on the interstate or primary system if the device has the purpose or effect of directing advertising messages to the other regulated highway.

4. If the outdoor advertising device has the purpose or effect of directing advertising messages to two or more regulated highways, the more stringent restrictions applicable to either regulated highway will apply.

The remaining subparagraphs in paragraph (1) of the rule will be renumbered in sequence.

1680-06-03-.03(1)(d)3. [as renumbered] – Size; measurement of sign face

Comments: OAAT questions the intent of stating that the area of a sign shall be measured by the smallest "single measurement of a" square, rectangle, or circle rather than "a combination thereof" as allowed in the current rules. OAAT expresses concern that this wording will unduly restrict the use of advertising embellishments that sometimes extend beyond the normal sign face.

Response: As noted in the response to OAAT's comments on the definition of "sign face" at Rule 1680-06-03-.02(32) above, TDOT recognizes the confusion caused by the "smallest single measurement" clause and will delete it. TDOT concurs that it is reasonable to make an accommodation for advertising embellishments outside the normal sign face so long as the total area in which advertising is displayed does not exceed the maximum size for permitted outdoor advertising devices. Accordingly, TDOT proposes to revise this part of the rule to state as follows:

> The area of each sign face shall be measured by the smallest square, rectangle, triangle, or circle, or combination thereof, that will encompass the entire area of the sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and

including the border and trim, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed. In the case of stacked devices or double-faced signs, the total display area of the device will be determined by combining the area of each sign face, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, including the border and trim and the area of any advertising embellishment outside the border and trim but excluding any airspace between the sign faces. (See illustrations in Rule 1680-06-03-.09, Appendix.)

1680-06-03-.03(1)(f)1.(ii) [as renumbered] – Spacing; minimum spacing from interchanges

Comments: With respect to the provision in this subpart prohibiting outdoor advertising devices within 1,000 feet of an interchange of an interstate or other controlled access highway located outside of an incorporated municipality, Mr. Bill Rush, Director of Federal & State Regulatory Affairs, Lamar Advertising Co. (Central Region), again objects to the clause providing that the same prohibition applies outside the urban services district in counties having a metropolitan form of government, which he contends is "very much akin to a City annexing properties into their jurisdiction." In addition, Mr. Rush requests, because of the increased use of acceleration/deceleration lanes on controlled access highways, that the distance from the interchange be measured from the gore instead of the beginning or ending of pavement widening, as provided in the current rule.

Response: As previously explained in TDOT's Responses to 11/4/2020 Public Hearing, TDOT declines to delete the provision in the current rule that prohibits outdoor advertising devices within 1,000 feet of an interchange in areas outside of the urban services district in counties having a metropolitan form of government. While state law authorizes the consolidation of city and county governments into a combined metropolitan form, per T.C.A. § 7-1-102, the law also continues to recognize a distinction between the general services district, which is coextensive with the total area of the county, and the urban services district, which encompasses the area of the principal city and, if ratified by the voters, the areas of other smaller incorporated municipalities located within the county. T.C.A. § 7-2-108(5). The metropolitan government is obligated to remove from the urban services district any areas of the former principal city where it will not be able to provide the higher level of urban services. T.C.A. § 7-2-108(a)(5). Conversely, the metropolitan government is authorized to expand the urban services district by annexation whenever the need for urban services arises in areas previously within the general services district. T.C.A. § 7-2-108(a)(6). (Note: This directly rebuts the contention that the establishment of a metropolitan government is by itself "akin" to annexation.) The level of taxation for the general services districts and urban services districts varies according to the level of services provided, T.C.A. §§ 7-2-108(a)(7)-(10); and for the purpose of levying taxes, the urban services district is constituted as a municipal corporation. T.C.A. § 7-2-108(a)(15). Further, the urban services district is treated as the equivalent of an incorporated municipality, and the general services district is treated as the equivalent of a rural area for the purposes of distributing state or federal financial aid. T.C.A. § 7-3-102(b)(4) and § 7-3-102(b)(3). Thus, state law does not treat the entire area of a metropolitan government as the equivalent of an incorporated municipality but instead continues to recognize a distinction between the more urbanized areas within an urban services district and the more rural character of the area outside the urban services district. Accordingly, for the purposes of controlling outdoor advertising in counties having a metropolitan form of government, TDOT has treated the urban services district in the same manner as an incorporated municipality while the areas outside of the urban services district are treated in the same manner as areas outside an incorporated municipality. This practice has been formalized in TDOT's rules since 1989. The Tennessee Attorney General's Office has

issued legal opinions affirming the validity of TDOT's practice, see, e.g., Tenn. Op. Atty. Gen. No. 83-309 (WL 167169), and the application of the rule has been upheld upon judicial review. *RTM Media, LLC, et al. v. Tennessee Department of Transportation*, Davidson County Chancery Court, No. 08-973-I (Order Affirming Administrative Decision, 11/16/2009).

TDOT also declines, for public safety reasons, to adopt the request to revise the rule to measure the minimum distance from the interchange from the gore instead of the beginning or ending of pavement widening. In general, interstate highways and other controlled access highways on the primary system will have higher speed limits in the more rural areas outside of incorporated municipalities or the urban services district in counties with a metropolitan government. Drivers approaching an exit or entering onto the highway will need a greater distance within which to make complex decisions and driving maneuvers to change lanes near an exit or to merge into traffic. On highways with speeds exceeding 55 mph, the Manual on Uniform Traffic Control Devices directs the placement of advance warning signs at distances of 1,000 feet or more from the exit. The distance between pavement widening and the gore ranges from 400 to 600 feet for single-lane exits and is generally more than 1,000 feet for exits with more than one lane. Permitting billboards within 1,000 feet of the gore would allow additional visual distractions into the area of highway exits and entrances intended for the placement of warning signs and performance of driving maneuvers.

1680-06-03-.03(1)(g)3. [as renumbered] – Control of Original Conforming Devices

Comments: OAAT expresses appreciation for TDOT's adding this provision in the revised rules to establish a timeframe goal for responding to a request to rebuild, reconstruct, or upgrade an original conforming device within 60 days, or to provide an explanation for why the 60-day timeframe cannot be met, but OAAT requests that the extended time be no longer than 30 days and again proposes that the request will be deemed to be approved if the Department does not provide a response within the specified time.

Response: Again, for reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT cannot accept that a request will be "deemed accepted" if TDOT does not respond to the request within a certain deadline. If an original conforming device is removed and not reconstructed or upgraded in compliance with the rules that apply to it as an original conforming device, it will become an illegal device with a voidable permit and subject to removal. Once the permit is voided, no other device can be permitted at that location as an original conforming device. The action or inaction of the Department cannot render a device compliant with the law and rules if it is not compliant in fact. However, TDOT can accept a modification to parts (g)3. and (g)4. of the rule to provide a shorter timeline for reviewing a request to reconstruct or upgrade an original conforming device and to clarify that the permit is voidable if removed without approval, so that the final rule will read as follows:

3. The Department shall use its best efforts to review and respond to a request to rebuild, reconstruct, or upgrade an original conforming device within no greater than thirty (30) days after the request is received. If a response cannot be provided within thirty (30) days after receipt of the request, the Department shall contact the requester prior to the expiration of the thirty (30) days to provide an explanation of the reasons why additional time is needed to review the request.
4. If an original conforming device is removed without prior approval from the Department to rebuild, reconstruct, or upgrade the device, the permit as an original conforming device is voidable and no new permit shall be issued for another outdoor advertising device as an original conforming device at that location.

Rule 1680-06-03-.03(2) – Restrictions on outdoor advertising devices adjacent to interstate or primary highways beyond 660 feet of the nearest edge of right-of-way

Consistent with the criteria established for determining whether an outdoor advertising device within the adjacent area of an interstate or primary highway has been erected with the purpose or effect of directing advertising messages to the main traveled way of the highway, the same criteria will be adopted to determine whether an outdoor advertising device erected beyond 660 feet of the right-of-way along an interstate or primary highway outside of an urban area has been erected for the purpose of having its message read from the main traveled way of the highway. The following sentence will be added to the end of subparagraph (2)(a) for this purpose:

> To determine whether an outdoor advertising device has been erected for the purpose of having its message read from the main traveled way of a highway on the interstate or primary system, the Department will apply the factors identified in Rule 1680-06-03-.03(1)(b).

Rule 1680-06-03-.04 – Permits, Renewals, and Administrative Hearings.

1680-06-03-.04(1)(a) – Application Requirements for New Outdoor Advertising Device Permits; general statement of permit requirement

Comments: OAAT again requests modification of a provision in the current rule stating that "An outdoor advertising device that is erected prior to obtaining the required permit shall be considered illegal and subject to removal at the expense of the owner" on the ground that this does not take into account a situation where an on-premises device is found to have spacing for an outdoor advertising device and the owner wants to transition it to a permitted outdoor advertising device without removing the sign or sign face just to be able to obtain a permit.

Response: Again, for reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT does not concur with the requested modification of the current rule. The 2020 Act expressly mandates in T.C.A. § 54-21-104(a) that no person shall "construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising device within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag." In turn, T.C.A. § 54-21-105(a) expressly states that "Any owner of any outdoor advertising device who has failed to act in accordance with § 54-21-104 must remove the outdoor advertising device immediately" and that "Failure to remove the outdoor advertising device renders the outdoor advertising device a public nuisance and subject to immediate disposal, removal, or destruction." If the owner does not immediately remove the illegal outdoor advertising device, TDOT has authority to remove the device and the owner is liable to TDOT for three (3) times the cost of removal and other penalties, as provided in T.C.A. § 54-21-105(b). The language in the current rule stating that an outdoor advertising device erected without a permit shall be considered illegal and subject to removal simply reiterates what the statute itself requires.

The rule as currently worded does not prevent the transition of a legal on-premises device to a permitted outdoor advertising device. A sign that meets the criteria for an on-premises device is not a regulated outdoor advertising device and is not required to have a permit from TDOT. If the owner of the on-premises device believes that the device meets the zoning, spacing, and other criteria for an outdoor advertising device, the owner may submit an application for a permit and, if granted, the owner may then begin operating the sign as

an outdoor advertising device. There is no provision in the rules that requires the owner of a legal on-premises device to take the sign face off the sign before obtaining a permit to operate the sign as an outdoor advertising device. However, if the owner begins operating an on-premises device as an outdoor advertising device before obtaining the required permit from TDOT, the sign will be considered illegal and subject to enforcement action under T.C.A. § 54-21-105. Similarly, if a person erects a sign in a location that does not qualify for treatment as an on-premises device (and it does not meet any other exception from regulation), the sign is an outdoor advertising device that requires a permit before it can be lawfully operated as such. If the sign owner nevertheless erects the outdoor advertising device without first obtaining the required permit, the device is illegal and subject to removal at the owner's expense as provided in T.C.A. § 54-21-105, just as the current rule says.

1680-06-03-.04(1)(d)3.(i)(II) and 1680-06-03-.04(1)(d)3.(ii)(II) – Application Requirements for New Outdoor Advertising Device Permits – Affidavit from Property Owner

Comments: OAAT again requests that the proposed language be modified to state that the property owner's name on the affidavit must be "substantially similar" to the property owner's name on the property record in the Assessor's office. OAAT notes that in some cases the property card includes the name of a partnership or an LLC but the name on the affidavit may only be a partner or a person authorized by the owner and expresses concern that getting the property record changed to match the affidavit will delay processing of the application.

Response: Again, for reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT does not accept the modification of the rule as proposed by OAAT. The proposed rule requires that the name of the landowner as identified in the affidavit must match the name of the landowner as identified in the most recent property record in the Assessor of Property's Office. It does not say that the name of the person signing the affidavit must necessarily match the name of the landowner identified in the property record. As OAAT notes, the property card may identify the owner as a partnership or an LLC, while the property owner's affidavit may be signed only by a partner or a person authorized to sign on behalf of the limited liability company or corporation. Thus, if the property record identifies the landowner as "ABC Partners" or "XYZ, Inc." the affidavit must identify the name of the landowner as "ABC Partners" or "XYZ, Inc." even though the signer of the affidavit may be partner A, B, or C, or President Xavier Y. Zee of XYZ, Inc. However, TDOT can agree to a modification of this part to allow the applicant to submit evidence that the property record in the Assessor's Office is out of date or that the property owner has authorized a lessee or other person to give the applicant permission to construct and operate the proposed outdoor advertising device, so that the final rule will read as follows:

3. A signed and notarized affidavit from the property owner or permanent easement owner (on a form provided by the Outdoor Advertising Office), as follows:
   (i) If the applicant is the property owner, the affidavit shall:
      (I) Certify the applicant's ownership interest in the property; and
      (II) Attach a copy of the applicant's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print-out of this document. The name of the property owner on the application must match the property owner's name on the affidavit exactly as the name on the property record card; provided, however, that the applicant may submit evidence, e.g.,

a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date.

(ii) If the applicant is the owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:

(I) Certify the applicant's easement interest in the property;

(II) Attach a copy of the deed granting the applicant a permanent easement right to construct and operate an outdoor advertising device on the property. The name of the easement owner on the application must match the easement owner's name on the affidavit exactly as the easement owner's name on the deed granting the easement; and

(III) Attach a copy of the most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print-out of this document; provided, however, that the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date.

(iii) If the applicant is not the property owner or owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:

(I) Certify that the property owner or owner of the permanent easement has given the applicant permission to construct and operate the proposed outdoor advertising device at the proposed location, or that a lessee or other person authorized by the property owner or owner of the permanent easement has given such permission, in which case the applicant shall provide an affidavit jointly signed by the property owner or owner of the permanent easement and the lessee or other person attesting that such permission has been given; and

(II) Attach a copy of the property owner's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print-out of this document. In addition, if applicable, attach a copy of the deed granting the permanent easement right to construct and operate an outdoor advertising device on the property. If the joint affidavit is signed by the property owner, the name of the property owner on the application must match the property owner's name on the affidavit exactly as the name on the property record card; provided, however, that the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date. If the joint affidavit is signed by the owner of the permanent easement, the name of the easement owner on the application must match the easement owner's name on the affidavit exactly as the easement owner's name on the deed granting the permanent easement.

1680-06-03-.04(2)(b) – Processing of Applications; incomplete applications

Comments: Scenic Tennessee objects to the revised proposed rule giving an applicant for an outdoor advertising device permit the opportunity to cure an incomplete or defective

application within fifteen (15) days before returning the incomplete or defective application to the applicant without further processing.

Response: For the reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT believes it is appropriate to modify the current rule to provide an opportunity to complete or correct an incomplete or defective application, in accordance with provisions of the 2020 Act in T.C.A. § 54-21-104(b)(1) (providing that TDOT "shall notify an applicant in writing no later than fifteen (15) days of receipt of the filed application of its incomplete or defective status, and indicate the information or documentation that is needed to complete or correct the application").

1680-06-03-.04(2)(g) – Procession of Applications; timeframe for processing

Comment: OAAT objects that the timeline for approval of outdoor advertising permits under the proposed rule is too open ended and leaves the businesses waiting on these permits in a state of uncertainty with no defined end date for the Department to make final determination. OAAT requests that the proposed rule be modified to state as follows: "The Beautification Office will use its best efforts to process an application in accordance with these rules, within no greater than 60 days after receipt of a complete application. If a decision either to issue or deny the permit cannot be made within 60 days, the Beautification office will contact the applicant prior to the expiration of the sixty days to provide an explanation of the reasons why additional time is needed to process the application. The Beautification office will have a maximum of 30 additional days to approve or deny the application or it will be deemed approved on the 30th day."

Response: TDOT declines to adopt the requested modification of the proposed rule. The wording of the proposed rule is taken almost verbatim from the 2020 Act, which provides in T.C.A. § 54-21-104(b)(1), as follows:

> The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department, within no greater than sixty (60) days after a completed application is received. . . . If a decision either to issue or deny the permit cannot be made within sixty (60) days after receipt of the completed or corrected application, the commissioner shall contact the applicant prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to process the application.

Further, TDOT cannot agree that an application should be "deemed approved" if it is not approved or denied within a set time. The action or inaction of the Department cannot render a proposed outdoor advertising device compliant with the law and rules if it is not compliant in fact.

1680-06-03-.04(2)(s)4. – Processing of Applications; application fee for devices not subject to regulation when erected

Comment: With respect to outdoor advertising devices that were not subject to regulation by TDOT when they were erected but are subsequently brought under TDOT's regulation, e.g., by the expansion of highways designated as a part of the primary highway system, Scenic Tennessee acknowledges that it is reasonable to give applicants for a permit forty-five (45) days to take remedial action to correct a violation or circumstance that prevents TDOT from issuing a permit, but Scenic Tennessee objects to giving an applicant an additional one hundred and fifty (150) days for good cause shown.

Response: For the reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT believes it is reasonable to provide a more specific process for determining what is a reasonable amount of time to give an applicant to correct a violation or circumstance that

would otherwise prevent TDOT from issuing the permit. The proposed rule adopts the same process that is normally allowed to the owner or operator of an outdoor advertising device that has received a notice of violation from TDOT under T.C.A. § 54-21-105(b).

1680-06-03-.04(8)(e) – Administrative Hearings

Comments: OAAT again requests modification of the current rule to provide a process to appeal the return of an incomplete application for a permit.

Response: For the reasons stated in TDOT's Responses to 11/4/2020 Public Hearing, TDOT declines to adopt the requested modification of the rule. The return of an application, along with the application fee and any other accompanying materials, without processing is neither a grant or denial of a permit and is not a final administrative action subject to appeal. The applicant remains free to submit a subsequent application for a permit at the same location. Moreover, creating an appeal right for the return of an unprocessed application would not only block that location from being permitted to another applicant while the appeal is pending, it would also prevent another applicant from obtaining a permit for any other location that might conflict with the minimum spacing distance from the location subject to the incomplete application appeal because that location would have to be held in a pending status until the appeal is resolved. See Rule 1680-02-03-.03(a)(a)7.(x) [renumbered as Rule 1680-06-03-.04(2)(l) in the proposed rules as revised].

1680-06-03-.04(10)(e) – Annual Renewal of Permits for Outdoor Advertising Devices

Comments: Scenic Tennessee objects that it is unreasonable to give a permit holder an additional one hundred and twenty (120) days to remedy a failure to renew the permit annually by the end of the calendar year as required in T.C.A. § 54-21-104(c)(1).

Response: As noted in TDOT's Responses to 11/4/2020 Public Hearing, the proposed rule is derived almost verbatim from the applicable statutory provisions of the 2020 Act, which provides in T.C.A. § 54-21-104(c)(2) as follows:

> In the event that a permit has not been renewed by December 31 for the following year as required by subdivision (c)(1), the permit is not considered void until the commissioner has given the permit holder notice of the failure to renew and the opportunity to correct the unlawfulness, as provided in § 54-21-105(b). The department must send the notice of the failure to renew within sixty (60) days after the failure to renew. The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within one hundred twenty (120) days of receipt of the notice. If a permit holder fails to renew the permit within this one-hundred-twenty-day notice period, then the permit is void and the outdoor advertising device is considered unlawful and subject to removal as further provided in § 54-21-105. The notice given by the commissioner must include the requirements for renewal and consequences of failure to renew as provided by this subdivision (c)(2).

Rule 1680-06-03-.08 – Vegetation Control.

1680-06-03-.08(2)(d)8. – Administration

Comments: Scenic Tennessee urges TDOT to require, rather than recommend, the use of native grasses or native plant seeds as a permit condition where vegetation removal exposes bare soil and erosion prevention measures are required.

Response: TDOT acknowledges that the use of native grasses and native plant seeds is an important tool to restore native habitats, including pollinator habitats, and the proposed rule recommends their use. However, TDOT prefers to allow some regulatory flexibility in meeting this permit condition.

General Comment from OAAT: OAAT again expresses concern that the vegetation control rule has been "dramatically changed" with no input from the outdoor advertising industry or the legislature and therefore opposes any changes unrelated to statutory changes.

Response: As previously noted in TDOT's Responses to 11/4/2020 Public Hearing, OAAT's comment does not identify any specific examples of "dramatic change" in the vegetation control rule, and therefore TDOT is unable to offer any specific responses. In large part, the proposed rule simply incorporates provisions in the 2020 Act regarding vegetation control permits and fees (T.C.A. § 54-21-116) and enforcement actions for unauthorized removal, cutting, or trimming of vegetation on state highway rights-of-way (T.C.A. § 54-21-117). In addition, the proposed rule details the processes for obtaining vegetation control permits and annual vegetation maintenance permits, and it establishes standard terms and conditions for each type of permit. These standard permit conditions are, for the most part, derived from the vegetation permit forms currently in use. However, TDOT believes that identifying these standard terms and conditions in the rule will serve regulatory transparency.

Additional Modifications to the Proposed Rule: Although OAAT did not provide any specific comments or make any specific recommendations for modifying the proposed rule in its public comments, TDOT has subsequently met with representatives of OAAT to discuss their specific concerns about the proposed rule. In consideration of these concerns and discussions, TDOT will make additional revisions to the final rule, as follows:

1680-06-03-.08(2)(d) – Vegetation control permits

Subparagraph (2)(d) of the rule, regarding permit conditions, will be revised to authorize the use of herbicides in specific circumstances subject to strict conditions; allow for access to the highway right-of-way through an access control fence subject to certain conditions; clarify the permittee's obligations to remove litter before mowing the right-of-way; and provide that if TDOT proposes to add any minimum terms and conditions it will publish the proposed additions on the Outdoor Advertising Office website before implementing them, as follows:

(d) Each vegetation control permit will be subject, at a minimum, to the following conditions:
    1. Permittee shall obtain any permits or approvals required by any regulatory agency having jurisdiction under federal, state, or local law over any work to be performed on the highway right-of-way, including without limitation any permits required under water quality regulations.
    2. Normally, the permittee will be authorized to remove or control vegetation only through the use of mechanical methods; provided, however, that beginning on March 1, 2024, the Department may authorize the use of herbicides in specific circumstances, subject to strict conditions, including but not limited to the requirements that the use of any herbicide may be allowed only between March 1 and October 15 of each year and must be performed by a person who has a valid current pesticide applicator certification in the applicable service category for right-of-way pest control and has, or works under the direct supervision of a person who has, a valid current pest control operator license from the Tennessee Department of Agriculture.
    3. Permittee shall notify any utility company that may be affected by the work, as required by law, including without limitation compliance with the Underground

Utility Damage Prevention Act, T.C.A. § 65-31-101, et seq, if applicable.

4. Permittee shall comply with the provisions of the Manual on Uniform Traffic Control Devices, as adopted in TDOT Rule 1680-03-01, applicable to work being performed adjacent to highways.
5. Parking on or working from the shoulder of the highway may be authorized only by special written permission from the Department. If authorization has been granted, a Shoulder Permit shall be attached to Vegetation Control Permit. Permittee's work forces must be present at all times any equipment is located on the shoulder.
6. There shall be no overnight parking of equipment on highway right-of-way, and no equipment shall be parked on the shoulder of the highway when the permittee's work forces are not present.
7. If the highway right-of-way is access-controlled, the permittee shall not obtain access to the right-of-way across the access control boundary, and the permittee shall not cut, remove, or damage any access control fence; provided, however, that the applicant may request the Department to permit a break in access control to obtain access to the right-of-way. If the applicant requests a break in access control, the applicant shall include as a part of the vegetation control permit application a written proposal, with photographs, showing why the break in access control is needed, how the applicant will obtain access to the property outside the access control fence, and the proposed extent and duration of the break in access control. The applicant will not be granted a break in access control for the purpose of obtaining access to the property outside the access control fence. The permittee will be required to provide a temporary barrier to protect access control when not on the job site and will be required to restore the access control fence to the Department's specifications promptly upon completion of the vegetation control work. In the event that the permittee, or the permittee's agent or representative, does unauthorized damage to a fence or any other public property in the work area, the permittee shall immediately repair or replace the same at the permittee's expense.
8. Any drainage tiles, culverts, or other drainage infrastructure must remain free and clear of cut brush, pulverized debris, or disturbed soil.
9. If any work authorized under the permit results in the exposure of bare soil on the state highway right-of-way, the permittee shall install erosion prevention and sediment control measures, including at a minimum the spreading of grass seed and straw on the soil. A mixture of native grasses or native plant seeds is recommended to promote native habitat restoration. Sowing of noxious weed seeds is strictly prohibited.
10. Trash and litter shall be picked up and removed from the highway right-of-way before mowing or bush-hogging; provided, however, if the permittee discovers hazardous waste that cannot be taken to a landfill but instead requires specialized disposal (e.g., automobile batteries, tires, paint, medical waste, drug paraphernalia, etc.), the permittee shall promptly notify the Department and cease any mowing or bush-hogging in the area where such waste is present.
11. Upon completion of the work, all trimmed or cut vegetation, brush, limbs, or large debris must be removed from the highway right-of-way. Permittee may be allowed to use chippers and grinders to reduce trimmed and cut vegetation into pulverized material and left on the highway right-of-way. Large piles of pulverized material are to be spread across the ground in a thin layer. Any large limbs or debris remaining in whole or only partially ground up shall be removed from the highway right-of-way. All authorized vegetation removal shall be cut to ground level. Stumps above ground level must be removed by permittee.
12. The Department reserves the right to add special permit conditions based on the particular circumstances existing at the vegetation control site. However, the

Department will not add general permit terms and conditions applicable to all permits beyond the items identified in this subsection (d) without first publishing the proposed permit condition on the Department's Outdoor Advertising Office website and allowing at least thirty (30) days for public comment.

1680-06-03-.08(3)(b) – Vegetation control permits

Subparagraph (3)(b) of the rule will be modified to clarify that applications for "non-compliant devices" means "devices without a visible tag," as follows:

(b) Before applying for a vegetation control permit, the applicant must verify that the issued tag for the permitted outdoor advertising device is posted on the device and visible from the main traveled way. Applications for devices without a visible tag will not be approved and the application fee will not be returned. A new replacement tag must be requested and posted on device before the applicant reapplies for a vegetation control permit.

1680-06-03-.08(3)(g) – Vegetation control permits

Subparagraph (3)(g) of the rule will be modified to allow for the submission of applications for vegetation control permits on a year-round basis, as follows:

(g) The Department will accept applications and issue vegetation control permits to allow vegetation control activities on a year-round basis; provided, however, if replacement vegetation is required, a vegetation control permit may be issued only between October 1 and April 15. If the Department authorizes the use of any herbicide as a method of vegetation control, the vegetation control permit may be issued only between March 1 and October 15.

1680-06-03-.08(4)(b) – Vegetation maintenance permits

Subparagraph (4)(b) of the rule will be modified to clarify that applications for "non-compliant devices" means "devices without a visible tag," as follows:

(b) Before applying for a vegetation maintenance permit, the applicant must verify that the issued tag for the permitted outdoor advertising device is posted on the device and visible from the main traveled way. Applications for devices without a visible tag will not be approved and the application fee will not be returned. A new replacement tag must be requested and posted on device before the applicant reapplies for a vegetation maintenance permit.

1680-06-03-.08(4)(e) – Vegetation maintenance permits

Subparagraph (4)(e) of the rule, regarding permit conditions, will be revised to authorize the use of herbicides in specific circumstances subject to strict conditions; allow for access to the highway right-of-way through an access control fence subject to certain conditions; clarify the permittee's obligations to remove litter before mowing the right-of-way; and provide that if the Department proposes to add any minimum terms and conditions it will publish the proposed additions on its outdoor advertising office website before implementing them, as follows:

(e) Furthermore, if a vegetation maintenance permit is issued, the applicant shall abide by all conditions imposed by the Department, as set forth on the face of the permit, or incur permit revocation and other consequences of law. The vegetation maintenance permit will be subject, at a minimum, to the following conditions:

1. Permittee shall obtain any permits or approvals required by any regulatory agency having jurisdiction under federal, state, or local law over any work to be performed

on the highway right-of-way, including without limitation any permits required under water quality regulations.

2. Normally, the permittee will be authorized to remove or control vegetation only through the use of mechanical methods; provided, however, that beginning on March 1, 2024, the Department may authorize the use of herbicides in specific circumstances, subject to strict conditions, including but not limited to the requirements that the use of any herbicide may be allowed only between March 1 and October 15 of each year and must be performed by a person who has a valid current pesticide applicator certification in the applicable service category for right-of-way pest control and has, or works under the direct supervision of a person who has, a valid current pest control operator license from the Tennessee Department of Agriculture.
3. Permittee shall notify any utility company that may be affected by the work, as required by law, including without limitation compliance with the Underground Utility Damage Prevention Act, T.C.A. § 65-31-101, et seq, if applicable.
4. Permittee shall comply with the provisions of the Manual on Uniform Traffic Control Devices, as adopted in TDOT Rule 1680-03-01, applicable to work being performed adjacent to highways.
5. Parking on or working from the shoulder of the highway may be authorized only by special written permission from the Department. If authorization has been granted, a Shoulder Permit shall be attached to Vegetation Control Permit. Permittee's work forces must be present at all times any equipment is located on the shoulder.
6. There shall be no overnight parking of equipment on highway right-of-way, and no equipment shall be parked on the shoulder of the highway when the permittee's work forces are not present.
7. If the highway right-of-way is access-controlled, the permittee shall not obtain access to the right-of-way across the access control boundary, and the permittee shall not cut or remove any access control fence; provided, however, that the applicant may request the Department to permit a break in access control to obtain access to the right-of-way. If the applicant requests a break in access control, the applicant shall include as a part of the vegetation maintenance permit application a written proposal, with photographs, showing why the break in access control is needed, how the applicant will obtain access to the property outside the access control fence, and the proposed extent and duration of the break in access control. The applicant will not be granted a break in access control for the purpose of obtaining access to the property outside the access control fence. The permittee will be required to provide a temporary barrier to protect access control when not on the job site and will be required to restore the access control fence to the Department's specifications promptly upon completion of the vegetation control work. In the event that the permittee, or the permittee's agent or representative, does unauthorized damage to a fence or any other public property in the work area, the permittee shall repair or replace the same at the permittee's expense.
8. Any drainage tiles, culverts, or other drainage infrastructure must remain free and clear of cut brush, pulverized debris, or disturbed soil.
9. If any work authorized under the permit results in the exposure of bare soil on the state highway right-of-way, the permittee shall install erosion prevention and sediment control measures, including at a minimum the spreading of grass seed and straw on the soil. A mixture of native grasses or native plant seeds is recommended to promote native habitat restoration. Sowing of noxious weed seeds is strictly prohibited.
10. Trash and litter shall be picked up and removed from the highway right-of-way before mowing or bush-hogging; provided, however, if the permittee discovers hazardous waste that requires specialized disposal (e.g., automobile batteries,

tires, paint, medical waste, drug paraphernalia, etc.), the permittee shall promptly notify the Department and wait for further instructions before mowing or bush-hogging in that area.

11. Upon completion of the work, all trimmed or cut vegetation, brush, limbs, or large debris must be removed from the highway right-of-way. Permittee may be allowed to use chippers and grinders to reduce trimmed and cut vegetation into pulverized material and left on the highway right-of-way. Large piles of pulverized material are to be spread across the ground in a thin layer. Any large limbs or debris remaining in whole or only partially ground up shall be removed from the highway right-of-way. All authorized vegetation removal shall be cut to ground level. Stumps above ground level must be removed by permittee.
12. The Department reserves the right to add special permit conditions based on the particular circumstances existing at the vegetation control site. However, the Department will not add general permit terms and conditions applicable to all permits beyond the items identified in this subsection (e) without first publishing the proposed permit condition on the Department's Outdoor Advertising Office website and allowing at least thirty (30) days for public comment.

1680-06-03-.08(4)(f) – Vegetation maintenance permits

Subparagraph (4)(f) of the rule will be modified to allow for year-round permits, as follows:

(f) The Department will accept applications and issue vegetation maintenance permits on a year-round basis. If the Department authorizes the use of any herbicide as a method of vegetation control, the vegetation maintenance permit will only be issued between March 1 and October 15.

Rule 1680-06-03-.09 – Complaint Procedures. [To be deleted]

General Comment: OAAT comments generally that the complaint procedures set out in the proposed rule are not what the outdoor advertising industry expected and that it will address its concerns in future legislative initiatives. More specifically, OAAT expresses concern that the complaint process will require TDOT to hire more personnel to administer the complaints and will divert resources from processing the ordinary business of TDOT's outdoor advertising staff. Accordingly, in order to discourage frivolous, repeated, or harassing complaints, OAAT proposes that the complainant should be required to deposit a $250 filing fee that will be returned if the complaint is deemed to have substantial merit. OAAT recommends making the complaint process discretionary rather than mandatory, by amending paragraph (1) of the rule as follows:

(1) The Department will accept and, in its discretion, may investigate all written complaints on a specific sign structure, sign company, or any other issue under the jurisdiction of the Highway Beautification Office.

OAAT also recommends increasing the time for investigating and responding to complaints from 60 to 90 days, if the complaint involves fewer than 10 signs, and from 90 to 180 days, if the complaint involves more than 10 signs, and further providing that TDOT will use its "best efforts" to meet these timeframes rather than making them mandatory. Finally, OAAT opposes the provision in paragraph (9) of the rule stating that TDOT will annually publish a list of complaints received in the previous year with a link to the text of the complaints and findings in each case.

Response: As noted in TDOT's Responses to 11/4/2020 Public Hearing, the 2020 Act directed TDOT in T.C.A. § 54-21-111 to promulgate rules to "establish procedures for accepting and resolving complaints related to signs that are subject to this chapter." It further directed that these complaint procedures must include: (1) a requirement to describe the complaint

procedures on TDOT's website; (2) a system to prioritize the resolution of complaints; and (3) a procedure for compiling and reporting detailed annual statistics about complaints. The informal complaint procedures set out in the proposed rule are modeled on a similar complaint process adopted in the State of Texas by the Texas Department of Transportation. See Texas Code of Administrative Regulations, Title 43 at § 21.203, Complaint Procedures. The additional time and effort required to administer this new complaint process is unknown, but TDOT is not presently assuming that it will unduly burden existing staff resources or require hiring additional staff. TDOT accepts OAAT's recommendation to increase the times for investigating complaints and to provide that TDOT will use it "best efforts" to meet these deadlines rather than making them mandatory. TDOT does not concur with the recommendation to require the complainant to deposit a filing fee of $250 because the statute does not authorize it. Finally, the reason for proposing an annual publication of complaints on TDOT website is to address the requirement in T.C.A. § 54-21-111(3) to establish a procedure for "compiling and reporting detailed annual statistics about complaints." The statute does not say to whom TDOT should report these detailed statistics about complaints, so in the interest of transparency and the lack of any other alternative the rule proposes that TDOT will report this information on its public website.

NOTE: The requirement in T.C.A. § 54-21-111 to promulgate rules to "establish procedures for accepting and resolving complaints related to signs that are subject to this chapter" has been deleted by 2023 Pub. Ch. 63. Accordingly, TDOT has deleted this proposed rule from Chapter 1680-06-03.

Rule 1680-06-03-.10 – Appendix. [To be renumbered as 1680-06-03-.09]

There were no comments received regarding any of the materials or illustrations included in the appendix.

Tennessee Department of Transportation
Right of Way Division

Chapter 1680-06-03
Control of Outdoor Advertising

Summary of Rulemaking Hearing Rules (Final Rules)

The following is a summary of revisions to the current regulations for the control of outdoor advertising as proposed in this rulemaking. The proposed revisions arise from the "content-neutral" framework for regulating outdoor advertising devices under the Outdoor Advertising Control Act of 2020 (the "2020 Act"), and also from previous amendments to the former Billboard Regulation and Control Act of 1972 (the "1972 Act"), which were incorporated into the 2020 Act. (See Tennessee Code Annotated, Title 54, Chapter 21, for the text of the 2020 Act.) Many other revisions have been made to address specific comments and concerns raised by the outdoor advertising industry and others. The proposed rules are also given a new control number to reflect the fact that the responsibility for the regulation of outdoor advertising will now fall under TDOT's Right of Way Division. A "redline" version of Chapter 1680-06-03, as amended, is attached to this summary.

Rule 1680-06-03-.01 – Preface.

The preface states that the purpose of these rules is to implement the 2020 Act to provide for the effective control of outdoor advertising as required by the Federal Highway Beautification Act (23 U.S.C. § 131) and FHWA regulations, subject to any limitations under the U.S. Constitution and the Tennessee Constitution.

Rule 1680-06-03-.02 – Definitions.

In general, the proposed rule retains or modifies definitions in the current rule and incorporates new definitions from the 2020 Act. The following revisions are proposed as new or clarified definitions:

"Abandoned outdoor advertising device"

- Clarifies the existing definition to provide objective standards for determining when a device will be considered abandoned.
- Adds a provision for suspending the 12-month period for establishing abandonment during a period of involuntary discontinuance, such as the closing of the highway in front of the sign.

"On-premises device"

- Clarifies that a sign which qualifies as an exempt "on-premises device" based on its location will not be considered a regulated "outdoor advertising device" based on the receipt of compensation merely because the owner/operator of the property pays a sign company to lease the use of the sign.

"Outdoor advertising device"

- Clarifies that the term "outdoor advertising device" includes any sign the Department is required to regulate to provide for the effective control of outdoor advertising in accordance with 23 U.S.C. § 131 and as further provided in the 2020 Act.

"Sign"

- Clarifies that a building, structure, or object having a primary function other than outdoor advertising will not be considered a "sign" subject to regulation merely because words or figures are on its surface unless compensation is received for displaying another party's messages.

"Sign face"

- Allows advertising embellishments outside the border and trim of the device to be measured only by the actual area occupied by the advertising embellishment, excluding airspace, so as to make the total measurement of the sign face less restrictive.

Rule 1680-06-03-.03 – Criteria for the Erection and Control of Outdoor Advertising Devices.

This rule generally describes the zoning, size, lighting, and spacing criteria for permitting outdoor advertising devices, as established in the agreements between TDOT and the U.S. Department of Transportation, Federal Highway Administration, and described in T.C.A. § 54-21-113 under the 2020 Act (and as previously authorized under the 1972 Act). As revised, the proposed rule:

- Describes the standard for measuring the 660 feet within the "adjacent area" of the highway that is subject to outdoor advertising regulations. At controlled access highway interchanges, where the right-of-way extends outward irregularly beyond the normal width, the measurement of the "adjacent area" will begin at a standard 100 feet from the main traveled way of the highway.

- Establishes criteria for determining whether an outdoor advertising device within the adjacent area of a highway on the interstate or primary system has the purpose or effect of directing advertising messages to the main traveled way of a regulated highway.

- Deletes exemptions for signs advertising activities conducted upon the property, or signs advertising the sale or lease of the property, on which the signs are located, and replaces these with "content-neutral" exemptions, including an exemption for "on-premises devices" based on location next to a "facility" open to the public and an exemption for small signs not exceeding 20 square feet, as provided in T.C.A. § 54-21-103(b).

- Includes updates governing permits for digital signs.

- Details the regulation of "original conforming devices" that were permitted between 1972 and 1984 under the size and spacing criteria established in TDOT's original agreement with the Federal Highway Administration (see T.C.A. § 54-21-113).

- Allows for advertising embellishments outside the normal border and trim of a sign face by including only the actual area occupied by these embellishments as part of the total area of the sign face.

- Excludes the airspace between double-faced or stacked devices for the purpose of determining the maximum size of the sign.

- Clarifies that for the purpose of applying the minimum spacing exception where two devices are separated by a building or other obstruction the determination will be based on whether the two devices are visible from the "main traveled way" of the highway at the same time.

Rule 1680-06-03-.04 – Permits, Renewals, and Administrative Hearings.

This rule details procedures for obtaining, annually renewing, and transferring permits for outdoor advertising devices. It also details requirements for the construction of permitted devices, criteria for voiding permits, and provisions for administrative hearings to resolve disputes regarding the denial or voiding of permits. In general, these provisions are not new but have been separated from Rule 1680-06-03-.03 into this new, stand-alone rule. The proposed rule includes the following revisions:

- Adds provisions for permitting digital billboards (previously authorized under amendments to the 1972 Act).

- Adds special provisions (based on legislation enacted in 2019) for permitting existing outdoor advertising devices that were not regulated when erected but have subsequently been brought under regulation, either by expansion of the National Highway System or because the devices were erected during the period of suspended enforcement after the Sixth Circuit declared the 1972 Act unconstitutional on September 11, 2019, but before the 2020 Act became effective on June 22, 2020.

- Adds provisions from the 2020 Act for conducting investigations and enforcement actions when TDOT has reason to believe that a sign owner is unlawfully operating the sign as an outdoor advertising device without a permit.

- Makes additional revisions to promote regulatory flexibility or greater clarity, as follows:

    - Provides an opportunity to correct an incomplete application for an outdoor advertising permit before returning the application and application fee without further processing.

    - Provides a process for determining a "reasonable amount of time" to cure a violation that would otherwise be grounds for denying a permit to a previously unregulated device.

    - Allows a permittee to construct an outdoor advertising device smaller than the dimensions of the device described in the permit application so long as the device is at least 20 square feet in total area and both the sign face and tag are visible to the main traveled way of the highway.

    - Updates the provisions for providing notice of a proposed enforcement action to conform to current provisions of T.C.A. § 54-21-105.

    - Revises the process for providing notice and an opportunity to cure a failure to comply with annual permit renewal requirements to conform to the current provisions of T.C.A. § 54-21-104.

Rule 1680-06-03-.05 – Control of Nonconforming Outdoor Advertising Devices.

This rule prescribes the regulations for maintaining devices that were lawful when erected but do not meet either the original or current zoning, spacing, size, or lighting standards. As revised, the proposed rule:

- Deletes the outmoded reference to "grandfathered non-conforming devices".

- Makes additional revisions to promote regulatory flexibility or greater clarity, as follows:

    - Updates provisions for "customary maintenance" of nonconforming devices to allow for partial replacement of poles or other support structures as authorized in the current statute.

    - Clarifies that replacement or repair of a device destroyed by vandalism or other criminal or tortious act is distinct from and does not limit "customary maintenance" of a nonconforming device.

Former Rule 1680-02-03-.05 – Directional Signs, has been deleted in its entirety because it was based on the former content-based definition of "directional signs" as signs advertising certain tourist-oriented businesses.

Rule 1680-06-03-.06 – On-Premises Devices.

This rule details the location criteria that must be met for signs to be exempted from regulation as on-premises devices. As revised, the rule:

- Incorporates the location criteria for exempted on-premises devices established in the 2020 Act (i.e., within 50 feet of, and on the same property as, a "facility" open to the public), but otherwise the proposed rule substantially preserves the provisions governing the "premises test" (i.e., location requirements) that are in the current rule.

- Deletes all provisions formerly governing the "purpose test" for on-premises devices based on the content of the message on the sign.

- Details provisions to address the requirement that on-premises devices cannot be engaged in the business of outdoor advertising.

- Clarifies that a sign which otherwise qualifies as an exempt on-premises device based on its location will not be considered a regulated "outdoor advertising device" based on the receipt of compensation merely because the owner/operator of the premises pays a sign company to lease the use of the sign.

Rule 1680-06-03-.07 – Removal of Abandoned Signs.

This rule details the process for permit revocation and removal of abandoned outdoor advertising devices. As revised, the rule:

- Revises the criteria for establishing abandonment to make them consistent with the revised definition of "abandoned outdoor advertising device".

- Provides that the 12-month period for establishing abandonment may be suspended during a period of involuntary discontinuance, such as the closing of the road in front of the sign.

- Details the process by which a permit holder will be given notice of the conditions constituting a potential abandonment before TDOT takes enforcement action to revoke the outdoor advertising permit of an abandoned device.

Rule 1680-06-03-.08 – Vegetation Control.

This rule details the processes for obtaining permits to enter onto state highway right-of-way to cut and remove vegetation impairing the visibility of permitted outdoor advertising devices adjacent to the right-of-way. As revised, the rule:

- Incorporates provisions from T.C.A. § 54-21-116 of the 2020 Act governing vegetation control permits, including a provision authorizing the reinstatement of vegetation control permits issued under the 1972 Act or allowing the owner of the device to apply for a new vegetation control permit under the 2020 Act.

- Incorporates provisions from T.C.A. § 54-21-117 regarding enforcement against the unauthorized removal, cutting, or trimming of vegetation on state highway right-of-way.

- Details the standard minimum conditions required for vegetation control and vegetation maintenance permits, including provision regarding traffic control, parking of equipment on the right-of-way, repair or damage to the right-of-way or access control fences, erosion control, and removal of debris.

- Makes additional revisions to promote regulatory flexibility, as follows:

    - Authorizes a running surety bond for vegetation control and annual vegetation maintenance permits.

    - Gives permittees an opportunity to apply for a temporary opening in access control to obtain access to the vegetation control site on the right-of-way, subject to various conditions, including the obligation to restore access control upon completion of the vegetation control activity.

    - Allows permittees an opportunity to request the use of herbicides for vegetation control in specific circumstances and subject to strict conditions, although normally requiring the use of mechanical methods for vegetation removal or control.

- Allows permittees to apply for and obtain vegetation control permits on a year-round basis, unless replacement vegetation is required, in which case the permits may be issued only between October 1 and April 15, or restricting the use of herbicides, if allowed, to the period between March 1 and October 15.

Rule 1680-06-03-.09 – Appendix.

As revised, the appendix:

- Includes copies of the original 1971 agreement and the 1984 supplemental agreement between TDOT and the Federal Highway Administration, each of which was authorized by the Tennessee General Assembly under the 1972 Act, and which together memorialize the zoning, size, spacing, and lighting requirements for effective control of outdoor advertising in the State of Tennessee.

- Incorporates the brightness standards for digital billboards, as established in T.C.A. § 54-21-119(h).

- Includes new and revised illustrations demonstrating various aspects of outdoor advertising control under these rules, as follows:

  - Adds an illustration of the standard for measuring the “adjacent area” of a controlled access highway at an interchange with another highway.

  - Revises the illustrations of the method for measuring the area of the sign face(s) of a device consistent with the less restrictive method adopted in the definition of “sign face” and the criteria for sign size in Rule 1680-06-03-.03(1)(d), which allow for advertising embellishments outside of the normal sign face.

  - Revises illustrations for measuring the size of stacked devices and double-faced signs to remove measurement of any airspace between multiple sign faces.

  - Revises the illustrations of “abandoned outdoor advertising devices” consistent with the revised definition and criteria set out in Rule 1680-06-03-.07.

  - Adds an illustration of the minimum spacing exception for devices that are not visible from the main traveled way of the highway at the same time.

RULES OF
TENNESSEE DEPARTMENT OF TRANSPORTATION
~~MAINTENANCE~~RIGHT OF WAY DIVISION

CHAPTER 1680-0~~2~~6-03
CONTROL OF OUTDOOR ADVERTISING

TABLE OF CONTENTS

1680-0~~2~~6-03-.01 PREFACE.

The purpose of ~~T~~these regulations ~~have been established by the Tennessee Department of Transportation, Maintenance~~Division~~,~~ is to implement and enforce the Outdoor Advertising Control Act of 2020 (effective June 22, 2020) to provide for effective control of ~~O~~outdoor ~~A~~advertising devices within the adjacent area of highways ~~to~~on ~~Federal Aid~~the interstate and ~~P~~primary ~~and Federal-Aid Interstate~~ highway systems within the State of Tennessee in accordance with and as required by 23 U.S.C. § 131 and 23 CFR Part 750, subject only to any limitations imposed by the United States Constitution as determined in the final judgment of a tribunal having jurisdiction over the matter. The Outdoor Advertising Control Act of 2020 and these regulations are subject to any applicable requirements of the Tennessee Constitution.

Authority: T.C.A. § 54-21-~~23~~111 ~~and U.S.C §131~~. Administrative History: Original rule certified June 10, 1974. Repeal and new rule filed June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989.

1680-0~~2~~6-03-.02 DEFINITIONS. ~~(Listed Alphabetically)~~

(1) "Abandoned ~~O~~outdoor ~~A~~advertising ~~D~~device~~,~~" means any regulated outdoor advertising device ~~which~~that for a twelve-month period falls into one or more of the following classifications:

(a) ~~a~~A device in substantial need of repair, which means that, in the case of wooden sign structures, sixty percent (60%) or more of the upright poles or supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support; provided, however, that a nonconforming device in a condition meeting these criteria will immediately be considered destroyed rather than abandoned;

(b) ~~a~~A device whose sign face ~~or faces is~~remains damaged fifty percent (50%) or more, or in the case of a device with multiple sign faces, each sign face that remains damaged fifty percent (50%) or more;

(c) ~~a~~A device ~~which displays only a message of its availability for advertising purposes,~~with a blank sign face (i.e., no advertising message), or in the case of a device with multiple sign faces, each sign face that remains blank; or

(d) A device that has been removed and has not been reconstructed in its permitted location; provided, however, that a nonconforming device that has been removed will immediately be considered destroyed rather than abandoned.

(e) The twelve-month period for establishing abandonment under subparagraphs (a) – (d) may be waived or suspended during a period of involuntary discontinuance, such as the closing of a highway for repair in front of the sign; provided, however, that the termination of the permit holder's lease, easement, or other right or permission for access from the landowner shall not be grounds for waiver of the twelve-month period for establishing abandonment.

(See illustrations in Rule 1680-06-03-.09, Appendix.)

(2) "Adjacent ~~A~~area~~,~~" means that area within six hundred sixty feet (660') of the nearest edge of the right-of-way of interstate and primary highways and visible from the main traveled way of the interstate or primary highways. (See Rule 1680-06-03-.03(1) for additional explanation regarding standards for measurement of the adjacent area.)

(3) "Agreement~~,~~" means the agreement entered into, pursuant to T.C.A. § 54-21-~~116~~113, between the~~Commissioner~~Department and the ~~Secretary~~United States Department of Transportation~~, of the United States~~Federal Highway Administration, regarding the definition of unzoned commercial and industrial areas, and size, lighting, and spacing of certain outdoor advertising devices. (Copies of the original agreement, dated November 11, 1971, and the supplemental agreement, dated October 16, 1984, are included in Rule 1680-06-03-.09, Appendix.)

(4) "Changeable message sign" means an outdoor advertising device that displays a series of messages at intervals by means of digital display or mechanical rotating panels.

(5) "Commissioner~~,~~" means the Commissioner of the Tennessee Department of Transportation or the Commissioner's designee.

(6) "Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future payment, or forbearance of debt.

(7) "Comprehensive ~~Z~~zoning~~,~~" means a complete approach to land use within an entire political subdivision. For example, the mere placing of the label "Zoned Commercial or Industrial" ~~on land~~as land use classification for taxation purposes does not constitute comprehensive zoning. ~~but rather,~~Comprehensive zoning requires the establishment of a complete set of regulations to govern the land use within the entire political subdivision ~~is required~~.

(8) "Conforming" means an outdoor advertising device that was permitted under and conforms to the zoning, size, lighting, and spacing criteria established in accordance with either the current supplemental agreement entered into between the Department and Federal Highway Administration on October 16, 1984, or the original agreement entered into on November 11, 1971, as authorized in § 54-21-113. Any permitted outdoor advertising device that continues to conform to either the current supplemental agreement or the original agreement and conditions provided in § 54-21-113 is considered conforming.

(9) "Controlled access highway" means a divided highway with full control of access, including grade-separated interchanges rather than at-grade intersections, and with no permitted driveway entrances or exits from the main traveled way.

(10) "Customary maintenance" means maintenance of a nonconforming outdoor advertising device, which may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period. (See illustrations

(Rule 1680-02~~2~~6-03-.02,
in Rule 1680-06-03-.09, Appendix.)

(11) "Department~~,~~" means the Tennessee Department of Transportation.

(12) "Destroyed~~,~~" means, with respect to ~~a~~ non-conforming ~~and grandfathered non-conforming~~outdoor advertising device~~s~~, ~~means~~ that, in the case of wooden sign structures, ~~fifty~~sixty percent (~~50~~60%) or more of the ~~device's~~upright ~~poles or posts~~supports of a sign structure are ~~dislocated or~~physically damaged ~~to the extent~~such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ~~any part of the stringers or sign face has fallen to the~~ ground of each broken, bent, or twisted support. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(13) "Digital display" means a type of changeable message sign that displays a series of messages at intervals through the electronic coding of lights or light emitting diodes or any other means that does not use or require mechanical rotating panels.

(14) "Directional ~~S~~sign~~s,~~" means ~~containing directional information about public places owned or operated by Federal, State, or local government or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation~~a type of official sign that identifies a site, attraction, or activity and directional information useful to a traveler in locating the site, attraction, or activity, including mileage, route numbers, or exit numbers.

(15) Double-faced, ~~B~~back-to-~~B~~back, or ~~"~~"V" ~~T~~type ~~S~~sign~~,~~" ~~shall~~ means those configurations or multiple outdoor advertising device structures, as those terms are ~~commonly~~ understood. In no instance shall these terms include two or more devices ~~which~~that are not physically contiguous or connected by the same structure or cross-bracing or, in the case of back-to-back or "V" type signs, located more than ~~15~~fifteen feet (15') apart at their nearest points. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(16) "Erect~~,~~" means to construct, build, raise, assemble, place, affix, attain, create, paint, draw, or in any other way bring into being or establish, but does not apply to changes of copy treatment on an existing outdoor advertising device.

(17) "Facility" means a commercial or industrial facility, or other facility open to public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas; provided, that activity conducted in a temporary structure or a structure operated only on a seasonal basis may be considered a facility for the purpose of allowing an on-premises device to be located on the same property, but the device is only allowed on a temporary basis during the period the facility is actually conducting activity.

~~Grandfather Non-Conforming Device, means one which was lawfully erected prior to the passage of the state law which is located in a legal area as defined by the law but which does not meet the size, lighting, or spacing criteria as set forth in the Agreement entered into between the Department of Transportation and the Federal Highway Administration which is part of the law.~~

(18) "Information ~~C~~center~~,~~" means an area or site established and maintained at a ~~S~~safety ~~R~~rest ~~A~~areafor the purpose of informing the public of places of interest within this State and providing ~~such~~ other information ~~as~~ the Commissioner may consider desirable.

(19) "Interstate ~~S~~system~~,~~" means that portion of the National System of Interstate and

(Rule 1680-02~~2~~6-03-.02,

Defense Highways located within this State, as officially designated, or as may hereafter be ~~so~~ designated, by the Commissioner, and approved by the Secretary of Transportation of the United States, pursuant to ~~the provisions of~~ Title 23~~,~~ of the United States Code.

(20) "Main ~~T~~traveled ~~W~~way~~,~~" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. ~~It~~"Main traveled way" does not include such facilities as frontage roads, turning roadways, parking areas.

(21) "Non~~-C~~conforming ~~Device,~~" means ~~one which~~an outdoor advertising device that was lawfully erected but ~~which~~ does not ~~comply with the provisions of state law or state regulations passed at a later date or which fail to comply with state law or state regulations due to changed conditions~~conform to the zoning, size, lighting, or spacing criteria established by and in accordance with either the current supplemental agreement entered into between the Department and the Federal Highway Administration on October 16, 1984, or in accordance with the original agreement entered into on November 11, 1971, as authorized in T.C.A. § 54-21-113. Any outdoor advertising device that continues to conform to either the terms of the current supplemental agreement or the original agreement as provided in T.C.A. § 54-21-113 shall not be considered nonconforming.

(22) "Official ~~S~~signs and ~~N~~notices~~,~~" means signs and notices erected and maintained by publicofficers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in ~~F~~federal, ~~S~~state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by ~~S~~state or local government agencies or non-profit historical societiesmay be considered official signs.

(23) "On-premises device" means a sign:

(a) That is located within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the facility (as defined above) that owns or operates the sign or within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located; and

(b) For which compensation is not being received and not intended to be received from a third party or parties for the placement of a message on the sign.

(24) "Original conforming device" means a device that was legally permitted on or after April 4, 1972, in accordance with the original agreement entered into between the Department and the Federal Highway Administration on November 11, 1971, as authorized in T.C.A. § 54-21-113(a), and which remains in compliance with the zoning, size, lighting and spacing criteria established in the original agreement.

(25) "Outdoor ~~A~~advertising device~~,~~" ~~means any outdoor sign~~:

(a) Means a sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign; and

(b) Does not include a sign that is an on-premises device or other type of sign exempt from regulation under Title 54, Chapter 21, of the Tennessee Code; and

(c) Does include any other sign the Department is required to regulate to provide for the

effective control of outdoor advertising in accordance with 23 U.S.C. § 131 and as further provided in Title 54, Chapter 21, of the Tennessee Code.

~~, display, device, bulletin, figure, painting, drawing, message, placard, poster, billboard, or other thing which is used to advertise or inform any part of the advertising or informative contents of which is located within an adjacent area and is visible from any place on the main traveled way of the state, interstate, or primary highway systems.~~

~~Parkland, means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historic site.~~

(26) "Person~~,~~" means and includes an individual, a partnership, an association, a corporation, or other entity.

(27) "Primary ~~S~~system~~,~~" means that portion of connected main highways, located within this State, as officially designated, or as may ~~be~~ hereafter be ~~so~~ designated by the Commissioner, and approved by the Secretary of Transportation of the United States, pursuant to ~~the provisions of~~ Title 23~~,~~ of the United States Code, including highways designated as part of the national highway system and highways formerly designated as part of the federal-aid primary system.

(28) "Public park" means any publicly owned land which is designated or used as a park, recreation area, wildlife or waterfowl refuge, or historic site.

(29) "Safety ~~R~~rest ~~A~~area~~,~~" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

(30) "Scenic ~~A~~area~~,~~" or "historic scenic area" means any area of particular scenic beauty or historical significance as determined by the ~~F~~federal, ~~S~~state, or local officials having jurisdiction thereof and includes interests in lands which have been acquired for the restoration, preservation, and enhancement of scenic beauty or historical resources.

~~Service Club and Religious Notices, means devices and notices, relating to non-profit service clubs, or charitable associations, or religious services.~~

(31) "Sign" means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform and any part of the advertising or informative contents of which is visible from any place on the main traveled way of an interstate system or primary system; provided, however, that a building, structure, or object having a primary function at its location other than to advertise or inform will not be considered a "sign" solely because words or figures, etc., are displayed on its exterior surface, unless the owner or operator is earning compensation directly or indirectly from a third party or parties for the placement of any message on the exterior of the building, structure, or object and provided that this exception shall not apply to any separate sign structure or sign face that is attached to the building, structure, or object.

(32) "Sign face" means the entire area of a sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed. (See illustration in Rule 1680-06-03-.09, Appendix.)

(33) "Stacked device" means an outdoor advertising device in which two (2) or more displays facing in the same direction of travel along the highway are stacked one (1) above the other in multiple sign faces separated by airspace and regulated together under one permit, as provided in T.C.A. § 54-21-118. (See illustration in Rule 1680-06-03-.09, Appendix.)

(34) "State system" means that portion of highways located within this State, as officially designated, or as may hereafter be designated, as state highways by the Commissioner.

(35) "Traveled ~~W~~way~~,~~" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(36) "Unzoned ~~C~~commercial or ~~Unzoned I~~industrial area~~,~~"

(a) ~~m~~Means ~~those~~an area~~s in a political subdivision not comprehensively zoned,~~ on which there ~~are~~is located one (1) or more permanent structures within which a commercial or industrial business is actively conducted, and which ~~are~~is equipped with all customary utilities~~,~~ facilities and open to the public regularly or regularly used by the employees of the business as their principle work station, or which, due to the nature of the business, is equipped, staffed, and accessible to the public as ~~is customary~~necessary~~.~~, ~~It~~and includes the area along the highway extend~~ed~~ing outward ~~600~~six hundred feet (600') from and beyond the edge of ~~the regularly used area of said~~such activity in each direction and a corresponding zone directly across a primary highway ~~which~~that is not also a limited ~~or controlled~~ access highway when~~. All measurements shall be from the edge of the regularly used building, parking lots, storage, or processing area of the commercial or industrial activity, not from the property lines of the activity and shall be along or parallel to the edge of the pavement of the highway. The area created by the 600 foot measurement may not infringe upon a public parkland, public playground, public recreation area, scenic area, cemetery, or upon an~~ the area ~~that~~ is not primarily residential in character or a~~. The area shall not include land across the highway from a commercial or industrial activity when said highway is an interstate or controlled access primary highway. None of the following, but not limited to the following, shall be considered commercial or industrial activities for the purpose of outdoor advertising.~~:

1. Public park;

2. Public playground;

3. Public recreational area;

4. Public forest, wildlife, or waterfowl refuge;

5. Historic scenic area; or

6. Cemetery;

(b) Does not include land across the highway from a commercial or industrial activity when the highway is an interstate or controlled access primary highway;

(c) Must be measured from the outer edges of the regularly used buildings, parking lots, storage, processing, or landscaped areas of the commercial or industrial activity, not from the property lines of the activity~~)~~; and

(d) Does not include the following activities conducted within the area, when considered for purposes of outdoor advertising:

1. ~~o~~Outdoor advertising structure~~s.~~;

2. ~~a~~Agricultural, forestry, ranching, grazing, farming, and related activities, including ~~but not limited to~~ wayside fresh produce stands~~.~~;

3. ~~t~~Transient or temporary ~~businesses and~~ activities~~. All businesses and activities that qualify must be established at least 10 months before the location is eligible.~~ (i.e., activities that are not conducted, at least in part, within one or more permanent structures, or activities that are not conducted on a regular schedule for at least five (5) days per week over a continuous period of not less than ten (10) months within a calendar year);

4. ~~businesses~~ Activities not ~~recognizable at anytime of the year as a commercial or industrial activity~~visible from the main traveled way~~.~~;

5. ~~a~~Activities more than ~~660~~six hundred and sixty feet (660') from the nearest edge of the right-of-way~~.~~;

6. ~~a~~Activities conducted in a building ~~principally~~primarily used as a residence~~.~~; and

7. ~~r~~Railroad tracks and minor sidings.

(e) ~~Note:~~ The six hundred feet (600') ~~feet~~ shall be measured along the edge of the pavement nearest the commercial activity and from points ~~which~~that are perpendicular to the edge of pavement of the traveled way. (See illustration in Rule 1680-06-03-.09, Appendix.)

(37) "Utility signs" means warning signs, notices, or markers that are customarily erected and maintained for operational and public safety purposes by publicly or privately owned utilities, railroads, ferries, airports, or other entities that provide utility or transportation services.

(38) "Visible~~,~~" means capable of being seen, ~~(~~whether or not readable~~)~~, without visual aid by a person of normal visual acuity.

~~Void, means a status in which a permit is in violation of at least one requirement of these Rules or governing statutes and such violation cannot or has not been cured within the applicable cure period such that the permit is subject to immediate revocation.~~

(39) "Voidable~~,~~" means a status in which a permit is in violation of at least one requirement of these Rules or governing statutes and eligible to be rendered void and the outdoor advertising device removed by a final administrative action.

(40) "Zoned ~~C~~commercial or ~~Z~~zoned ~~I~~industrial~~,~~" means those areas in a comprehensively zonedpolitical subdivision set aside for commercial or industrial use pursuant to the state or local zoning regulations, but shall not include strip zoning, spot zoning, or variances granted by the local political subdivision strictly for outdoor advertising.

Authority: T.C.A. §§ 54-21-~~104~~102, ~~54-21-105,~~ 54-21-103, ~~and~~ 54-21-~~112~~111, and 54-21-118. Administrative History: Original rule certified June 10, 1974. Repeal and refiled June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989. Amendment filed February 1, 1989; effective March 18, 1989. Public Necessity rule filed August 1, 2006; effective October 1, 2006 through March 15, 2007. Amendment filed December 21, 2006; effective March 6, 2007. Amendment filed September 24, 2008; effective December 8, 2008.

1680-02~~2~~6-03-.03 CRITERIA FOR THE ERECTION AND CONTROL OF OUTDOOR ADVERTISING DEVICES.

(1) Restrictions on ~~O~~outdoor ~~A~~advertising devices within the adjacent area of highways on

(Rule 1680-02~~2~~6-03-.02,
the ~~to l~~interstate and ~~P~~primary ~~Highways~~systems~~:~~.

~~(a)~~Outdoor ~~A~~advertising devices erected or maintained within ~~660 feet of the nearest edge of the~~right-of-way the adjacent area of a highway on the interstate or primary system and visible from the main traveled way of the highway are subject to the ~~following~~ restrictions~~:~~ established in T.C.A. § 54-21-103 and as further provided in this rule.

(a) Measurement of the adjacent area.

1. In general, the measurement of the adjacent area shall begin at the nearest edge of the highway right-of-way property line and continue outward six hundred and sixty feet (660'); provided, however, that:

2. Where the highway right-of-way width extends outward more than one hundred feet (100') from the main traveled way of an interstate or other controlled access highway at an interchange with another highway that is not a controlled access highway, the measurement of the adjacent area beyond the interchange will begin at a line that is one hundred feet (100') outward from, and parallel to, the outside edge line of the through lanes on the main traveled way, excluding shoulders, exit ramps, entrance ramps, and acceleration or deceleration lanes. (See illustration in Rule 1680-06-03-.09, Appendix.)

(b) Criteria for applying regulations based on visibility from the main traveled way.

The following criteria will be used to determine whether an outdoor advertising device located within the adjacent area of a highway on the interstate or primary system (regulated highway) should be subject to the restrictions established in this rule because the device has the purpose or effect of directing advertising messages to the main traveled way of the regulated highway:

1. In general, an outdoor advertising device within the adjacent area of a regulated highway is subject to the restrictions established in this rule if fifty percent (50%) or more of the sign face is visible from the main traveled way of the regulated highway.

2. Notwithstanding that fifty percent (50%) or more of the sign face is visible from the main traveled way of a regulated highway, the outdoor advertising device will not be subject to the restrictions applicable to the regulated highway, or it may be subject to restrictions applicable to a different regulated highway, if any of the following factors, or combination of factors, indicate that the device does not have the purpose or effect of directing advertising messages to the main traveled way of the regulated highway:

(i) The proximate location of the device to another intersecting or parallel highway within the adjacent area of the regulated highway;

(ii) The size of the sign face in relation to the distance of the device from the regulated highway or other highway;

(iii) The orientation of the sign face by height or angle in relation to the regulated highway or other highway;

(iv) The duration of time the sign face is visible from the main traveled way to the driver or passenger of a vehicle traveling at the maximum speed on the regulated highway;

(v) The use of illumination or a digital display to attract attention to the sign face from the main traveled way of the regulated highway or other highway;

(vi) The presence of obstructions or seasonal vegetation that blocks visibility of the sign face for at least six (6) months of the year; or

(vii) Other potentially relevant factors.

3. If application of the factors in part 2 above indicates that the device does not have the purpose or effect of directing advertising messages to the main traveled way of the regulated highway, the device will not be subject to the restrictions applicable to that regulated highway, but will be subject to the restrictions applicable to another regulated highway on the interstate or primary system if the device has the purpose or effect of directing advertising messages to the other regulated highway.

4. If the outdoor advertising device has the purpose or effect of directing advertising messages to two or more regulated highways, the more stringent restrictions applicable to either regulated highway will apply.

~~1.~~(c) Zoning restrictions~~:~~.

Outdoor ~~A~~advertising devices must be located in areas zoned ~~for~~ commercial or zoned industrial ~~use~~ or in areas which qualify ~~for~~as unzoned commercial or industrial ~~use~~areas. (See ~~D~~definitions of "unzoned commercial or industrial area" and "zoned commercial or zoned industrial" in Rule 1680-02~~2~~6-03-.02~~, Paragraph 27~~.)

~~(i)~~2. The following types of ~~advertising~~ signs are not restricted by the zoning criteria:

~~(I)~~(i) ~~Directional and other o~~Official signs and notices, including directional signs, ~~but not limited to natural wonders, scenic, and historic attractions, which are~~ authorized or required by law~~.~~;

~~(II) Signs, displays, and devices advertising the sale or lease of property on which they are located.~~

~~(III)~~ (ii) ~~Signs, displays, and devices advertising activities conducted on the property on which they are located~~On-premises devices~~.~~ (~~S~~see Rule 1680-02~~2~~6-03-.06 for detailed description of ~~an~~ on-premises ~~sign~~devices);

(iii) Signs other than outdoor advertising devices that:

(I) Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area; and

(II) Do not contain any flashing, intermittent, or moving lights;

(iv) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(v) Utility signs.

~~2.~~(d) Size restrictions~~:~~.

~~(i)~~1. The maximum total gross area for ~~one~~a sign face on an outdoor advertising ~~structure~~device, or the total area of the sign faces per horizontal facing on a

stacked device or double-faced sign, shall be ~~775~~seven hundred seventy-five square feet (775 sq. ft.), with a maximum height of ~~30~~thirty feet (30') or maximum length of ~~60~~sixty feet (60'); provided, however, that ~~(~~a 60'x30' sign face is not allowed~~)~~. All measurements of the sign face shall be inclusive of any border and trim, and any advertising embellishments as provided in part 3 below, but exclusive of ornamental base or apron supports and other structural members.

2. In counties having a population greater than 250,000 the ~~state~~Department will accept the particular county's standard size, but in no instance shall this standard size, determined by the local governing body, exceed 1,200 square feet, inclusive of any border and trim and any advertising embellishments but exclusive of ornamental base or apron supports and other standard members.

~~(ii)~~3. The area of each sign face shall be measured by the smallest square, rectangle, triangle, or circle, or combination thereof ~~which~~ that will encompass the entire area of the sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, and it also includes area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed. In the case of stacked devices or double-faced signs, the total display area of the device will be determined by combining the area of each sign face, measured by the smallest square, rectangle, triangle, or circle, or combination thereof, including the border and trim and the area of any advertising embellishment outside the border and trim but excluding any airspace between the sign faces. (See illustrations in Rule 1680-06-03-.09, Appendix.)

~~(iii)~~4. An outdoor advertising ~~structure~~device may contain one ~~device~~sign face per horizontal facing and may be ~~stacked,~~ back-to-back or V-type, or in the case of a stacked device or double-faced sign the device may contain two (2) or more sign faces per horizontal facing, but the total area of any ~~facing~~sign face, or combination of sign faces, may not exceed ~~775~~seven hundred seventy-five square feet (775 sq. ft.) except as outlined above for counties with a population of 250,000 or greater. In accordance with T.C.A. § 54-21-118, no permits shall be issued for any new stacked devices after July 1, 2001. However, a stacked device legally permitted and erected on or before July 1, 2001, may remain in its location, subject to the annual renewal of the permit, or the holder of the permit may move a lawfully permitted stacked device to a new location if the location is otherwise eligible for a permit.

~~(iv)~~5. ~~Diagrams are included~~See illustrations in ~~the~~Rule 1680-06-03-.09, Appendix, ~~to this issuance~~ to further describe the size requirements.

~~(v) Size criteria for directional signs is contained in §1680-02-03-.05.~~

~~(vi)~~6. The following types of ~~advertising~~signs are not subject to size restrictions:

~~(I)~~(i) ~~Signs, displays, and devices advertising the sale or lease of property on which they are located~~Official signs and notices~~.~~, including directional signs;

~~(II)~~(ii) ~~Signs, displays, and devices advertising activities conducted on the property on which they are located (o~~On-premises devices~~).~~;

(iii) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(iv) Utility signs.

7. Signs located along a designated scenic highway or parkway are subject to additional size restrictions as provided in T.C.A. §§ 54-17-108 – 54-17-109 and §§ 54-17-205 – 54-17-206.

~~3.~~(e) Lighting restrictions~~:~~.

~~(i)~~1. Outdoor advertising devices ~~which~~that contain, include, have attached, or are illuminated by any flashing, intermittent or moving light, or lights which involve moving parts are prohibited, except ~~that which gives public information, such as time, date, temperature, weather, or similar information~~ changeable message signs with a digital display, as authorized in T.C.A. § 54-21-119 and subparagraph (h) below, or a small digital display, not to exceed one hundred square feet (100 sq. ft.), within a larger non-digital sign face.

~~(ii)~~2. Outdoor advertising devices ~~which is~~that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of any ~~i~~interstate or ~~Federal-Aid P~~primary ~~H~~highway and are of such intensity or brilliance as to cause glare or to impair vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle, are prohibited.

~~(iii)~~3. No outdoor advertising device shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

~~4.~~(f) Spacing restrictions~~:~~.

~~(i)~~1. Interstate Highway Systems and Controlled Access Primary Highways.

~~(I)~~(i) No two ~~structures~~outdoor advertising devices shall be spaced less than one thousand feet (1,000') ~~feet~~ apart on the~~same~~ side of ~~the~~a highway on the interstate system or a controlled access highway on the primary system; provided, however, that outdoor advertising devices may be spaced closer together where they are separated by buildings or other obstructions, so that only one (1) outdoor advertising device is visible from the main traveled way of the highway at any one (1) time. The obstruction must be continuous in character; an obstruction caused by a temporary structure or seasonal vegetation will not qualify. (See illustration in Rule 1680-06-03-.09, Appendix.)

~~(II)~~(ii) Outside the corporate limits of a municipality, or in a county having the metropolitan form of government, outside the urban services district, no ~~structure~~outdoor advertising device may be located adjacent to or within one thousand feet (1,000') of an interchange or intersection at-grade, measured along the interstate or controlled access highway on the primary system from the nearest point of the beginning or ending of pavement widening at the exit or entrance to the main traveled way. Provided, however, that if the boundaries of the urban services district in a county having the metropolitan form of government, overlap the corporate limits of a municipality, located within any such county, then

the corporate limits shall be the prevailing factor for determining spacing of structures, rather than the urban services district boundaries. (See illustrations in Rule 1680-06-03-.09, Appendix~~, page 90~~.)

~~(ii)~~2. Primary Highway System (Non-Controlled Access).

~~(I)~~(i) Outside the corporate limits of a municipality, or in the case ~~-~~of ~~-~~a county having the metropolitan form of government, outside the urban services district, no two ~~structures~~outdoor advertising devices shall be spaced less than five hundred feet (500') apart on the same side of ~~the~~a highway on the primary system that is not a controlled access highway. Provided, however, that if the boundaries of the urban services district in a county having the metropolitan form of government, overlap the corporate limits of a municipality located within any such county, then the corporate limits shall be the prevailing factor for determining spacing of structures, rather than the urban services district boundaries.

~~(II)~~(ii) Within the corporate limits of a municipality, or in the case of a county having the metropolitan form of government, within the urban services district boundaries, no two outdoor advertising devices shall be spaced less than one hundred feet (100') feet apart on the same side of a highway on the primary system that is not a controlled access highway.

~~(iii) Spacing Exceptions~~

~~With respect to (I) of (i) and (I) and (II) of (ii), structures may be spaced closer together when they are separated by buildings or other obstructions so that only one is visible from the main traveled way within the otherwiseapplicable spacing requirement at any one time. The applies to both Federal-Aid Interstate and Federal-Aid Primary routes.~~

~~(iv)~~3. Explanatory Notes.

With respect to spacing requirements on both the ~~Federal-Aid I~~interstate and ~~P~~primary ~~Highway S~~systems:

~~(I)~~(i) The following types of signs are not subject to spacing requirements, ~~shall not be counted~~ nor shall measurements be made from them for purposes of determining compliance with spacing requirements:

~~I.~~(I) ~~Directional and other o~~Official signs and notices~~.~~, including directional signs;

~~II.~~(II) ~~Signs, displays, and devices advertising the sale or lease of the property on which they are located.~~

~~III. Signs, displays, and devices advertising activities conducted on the property on which they are located. (On Premise)~~On-premises devices;

(III) Signs other than outdoor advertising devices that:

I. Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area; and

II. Do not contain any flashing, intermittent, or moving lights;

(IV) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(V) Utility signs.

~~(II)~~(ii) The minimum distance between outdoor advertising devices shall be measured along the nearest edge of pavement to the outdoor advertising device between points determined by a right angle from the edge of pavement directly opposite and transecting the leading pole of the ~~signs~~device~~s~~ along each side of the highway. (See illustrations in Rule 1680-06-03-.09, Appendix ~~— page 91~~.)

4. Signs Located Along Scenic Highways or Parkways.

Signs located along a designated scenic highway or parkway are subject to additional spacing restrictions as provided in T.C.A. §§ 54-17-108 – 54-17-109 and §§ 54-17-205 – 54-17-206.

(g) ~~[reserved]~~Control of Original Conforming Devices.

1. An original conforming device, as defined in Rule 1680-06-03-.02, may remain in place or may be rebuilt, reconstructed, or upgraded, subject to the following restrictions:

(i) A valid permit must be maintained for the device;

(ii) The permit holder must notify and obtain authorization from the Department's Outdoor Advertising Office before rebuilding, reconstructing, or upgrading the device; and

(iii) The device must remain in place or be rebuilt in the exact previous location.

2. A violation of one or more of the restrictions established in part 1 above will render the permit voidable.

3. The Department shall use its best efforts to review and respond to a request to rebuild, reconstruct, or upgrade an original conforming device within no greater than thirty (30) days after the request is received. If a response cannot be provided within thirty (30) days after receipt of the request, the Department shall contact the requester prior to the expiration of the thirty (30) days to provide an explanation of the reasons why additional time is needed to review the request.

4. If an original conforming device is removed without prior approval from the Department to rebuild, reconstruct, or upgrade the device, the permit as an original conforming device is voidable and no new permit shall be issued for another outdoor advertising device as an original conforming device at that location.

(h) Changeable Message Signs with a Digital Display.

1. Changeable message signs with a digital display that meet all other requirements pursuant to Title 54, Chapter 21, of the Tennessee Code and these rules are permissible subject to the following restrictions:

(i) The message display time must remain static for a minimum of eight (8)

seconds with a maximum change time of two (2) seconds;

(ii) Video, continuous scrolling messages, and animation are prohibited; and

(iii) The minimum spacing of the changeable message signs with a digital display facing the same direction of travel on the same side of the interstate system or controlled access highways on the primary system is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, within a larger non-digital sign face is not subject to the minimum spacing requirement established in this subpart (iii), or to any application for a specific digital display permit or permit addendum, or to any fee for a permit addendum as established in § 54-21-104(b).

2. Brightness standards.

(i) All changeable message signs installed on or after July 1, 2014, must come equipped with a light-sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(ii) The brightness standards and methods for measuring the brightness of a digital display are set forth in T.C.A. § 54-21-119(h), which is incorporated herein by reference, and as described in Rule 1680-06-03-.09, Appendix.

~~1. Application Requirements for New Outdoor Advertising Permits.~~

~~(i) No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained, any outdoor advertising device visible from the main traveled way of the Interstate System, Federal Aid Primary System, or National Highway System and subject to regulation under Title 54, Chapter 21 of the Tennessee Code without first obtaining from the Department a permit and tag authorizing the same. An outdoor advertising device that is erected prior to obtaining the required permit shall be considered illegal and subject to removal at the expense of the owner as provided in Tennessee Code Annotated § 54-21-105.~~

~~(ii) The outdoor advertising permit application form and related forms may be viewed on the Department's Beautification Office website at An original permit application form and related forms may be obtained from any of the following Beautification Offices:~~

~~Headquarters - Beautification Office Suite 400, James K. Polk Bldg.~~
~~505 Deaderick Street~~
~~Nashville, TN 37243-0333~~
~~Telephone No. 615-741-2877~~
~~Fax No. 615-532-5995~~

~~Region I - Beautification Office Region II - Beautification Office 7345 Region Lane P. O. Box 22368~~

~~Knoxville, TN. 37901 4005 Cromwell Road~~
~~Telephone No. 865-594-2451 Chattanooga, TN. 37422-2368~~
~~Fax No. 865-594-6341 Telephone No. 423-892-3430, Ext. 2293~~
~~Fax No. 423-899-1636~~

~~Region III - Beautification Office Region IV - Beautification Office 6601 Centennial Blvd. 300 Benchmark Place~~
~~Nashville, TN. 37243-0360 Jackson, TN. 38301-0429~~
~~Telephone No. 615-350-4389 Telephone No. 731-935-0170~~

(Rule 1680-02~~2~~6-03-.02,
~~Fax No. 615-350-3966 Fax No. 731-935-0208~~

~~(iii) A complete original application for an outdoor advertising permit must be hand delivered or mailed to the Department's Headquarters Beautification Office in Nashville at the address indicated above. No faxed application materials will be accepted.~~

~~(iv) In addition to a completed application form, a complete application for an outdoor advertising permit shall also include the following:~~

~~(I) Payment of the application fee by check or money order made payable to the Tennessee Department of Transportation and in the amount established in T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Headquarters Beautification Office);~~

~~(II) A map or scaled drawing which shows:~~

~~I. The property lines of the real property within which the outdoor advertising device is to be located;~~

~~II. The location of the highway along which the outdoor advertising permit is requested and any other public roads adjacent to the property;~~

~~III. The location and property lines of the State's highway right-of- way;~~

~~IV. The location of the proposed outdoor advertising device within the property; and~~

~~V. The public road, driveway, or other means by which the applicant can obtain access to the real property where the proposed outdoor advertising device is to be located without using direct ingress and egress across or using any part of the state highway right-of-way.~~

~~(III) A signed and notarized affidavit from the property owner (on a form provided by any of the Beautification Offices listed above), as follows:~~

~~I. If the applicant is the property owner or the owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:~~

~~A. Certify the applicant's ownership interest in the property; and~~

~~B. Attach a copy of the applicant's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print-out of this document.~~

~~II. If the applicant is not the property owner or owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:~~

~~A. Certify that the property owner has given the applicant permission to construct and operate the proposed outdoor advertising device at the proposed location; and~~

~~B. Attach a copy of the property owner's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print-out of this document.~~

~~(v) The applicant shall mark the proposed location of the outdoor advertising device in the~~

~~field by placing a stake in the ground, the top of which shallbe not less than four (4) feet above ground level, at the precise location onthe owner's property where the device is proposed to be located; provided,however, that if the proposed location of the device is in a paved area, theprecise location shall be marked on the pavement in paint. The stake ormark shall identify the applicant.~~

~~2. Processing of Applications.~~

~~(i) No application for an outdoor advertising permit will be considered unless the completed application form and all other documents required by these Rules have been filed in the Headquarters Beautification Office. An incomplete application will not be considered.~~

~~(ii) All documents included with an incomplete application shall be returned to the applicant without being processed, and the application fee shall be returned or refunded. If the incomplete application is accompanied by any other documents pertaining to the permitting of any outdoor advertising device, including without limitation a request to cancel another outdoor advertising permit or the cancellation of a previous request for hearing, the entire package will be returned to the applicant with the incomplete application without being processed.~~

~~(iii) If an application is withdrawn or returned for any reason, and the applicant chooses to resubmit the application, the subsequently filed application, if complete, shall be processed as a new application as of the date it isreceived and shall be given a new application number.~~

~~(iv) The return of an incomplete application, and any accompanying materials, without processing in accordance with these Rules is not a final administrative action subject to appeal or an administrative hearing.~~

~~(v) Complete applications will be considered on a first come, first served basis and processed in order of time stamped at the Headquarters Beautification Office upon receipt.~~

~~(vi) Upon determining that an application is complete, the Headquarters Beautification Office will forward the complete application to the Beautification Office personnel assigned to conduct a field inspection.~~

~~(vii) Upon receiving a complete application, the assigned Beautification personnel will initiate a field inspection of the proposed location for the outdoor advertising device.~~

~~(viii) If Beautification personnel find that the actual proposed location is not marked on the pavement or staked in the field by a stake as required in these Rules, the Beautification personnel will so notify the Headquarters Beautification Office and the application will be denied. Prior to denying an application, the Beautification personnel will attempt to contact the applicant so that the defect may be cured.~~

~~(ix) If Beautification personnel find that the proposed outdoor advertising location would fail to meet the minimum spacing required by law due to a conflict with the location of an earlier filed application, or with the location of an existing permit that the Department has deemed voidable under these Rules, the Beautification personnel shall not complete the field inspection on the later filed application and shall notify the Headquarters Beautification Office that a minimum spacing conflict exists.~~

~~(x) Because applications must be considered on a first come, first served basis, the Headquarters Beautification Office shall proceed as follows upon being notified that a minimum spacing conflict exists:~~

(Rule 1680-02~~2~~6-03-.02,

~~(I) If an application is submitted for a proposed location that has a minimum spacing conflict with the location proposed in an earlier filed application, the Headquarters Beautification Office shall first determine whether to grant or deny the permit requested in the earlier filed application and proceed as follows:~~

~~I. If the earlier filed application is granted, the HeadquartersBeautification Office shall deny the later filed application.~~

~~II. If the earlier filed application is denied, the later filed application will not be processed until such time as the earlier applicant has an opportunity to request a hearing on the denial and then asfollows:~~

~~A. If the earlier applicant makes a timely request for a hearing, the later filed application, including the application fee and all documents accompanying the application shall be returned to the applicant without processing.~~

~~B. If the earlier applicant does not make a timely request for hearing, the later filed application will be processed and either granted or denied in accordance with these Rules.~~

~~(II) If an application is submitted for a proposed location that has a minimum spacing conflict with the location of an existing outdoor advertising device having a permit that the Department has deemed voidable under these Rules, but which remains in a pending status because the holder of the permit still has the opportunity to undertake remedial action or to request a hearing, or because the holder of the permit has requested a hearing but the case has not been finally adjudicated, the application for the new outdoor advertising permit, including the application fee and all documents accompanying the application, shall be returned to the applicant without processing.~~

~~(xi) If the proposed location is properly marked on the pavement or staked in the field and there does not appear to be any minimum spacing conflict with a pending application or permit, Beautification personnel will complete the field inspection in consideration of the zoning, spacing and other requirements for permitting an outdoor advertising device under these Rules.~~

~~(xii) Apart from the failure to meet any other requirement of these Rules, if it is determined by the Beautification personnel that the applicant is unable to obtain access to the proposed location to erect and maintain an outdoor advertising device except by direct ingress and egress across the statehighway right of way, or by breaching the State's right of access control, if any, or by using some part of the State's right-of-way, then the application shall be denied.~~

~~(xiii) Upon completing the field inspection, Beautification personnel will submit awritten field inspection report to the Headquarters Beautification Office.~~

~~(xiv) The Headquarters Beautification Office will review the field inspection report for completeness and accuracy. The Headquarters Beautification Office shall make the determination to grant or deny the requested outdooradvertising permit and shall notify the relevant Beautification Office of its decision.~~

~~(xv) If the Headquarters Beautification Office grants the permit, a serially numbered permit and metal tag will be issued to the applicant. The permit and metal tag shall be issued only for the specific outdoor advertising sign face identified on the approved application and only for the precise location footprint as marked on the pavement or as staked in the field. Under no circumstances shall a permit and/or tag be used for or moved to~~

~~any other location.~~

~~(xvi) If the Headquarters Beautification Office decides to deny the permit, the Department will send a copy of the disapproved application to the applicant with a letter explaining the reason for the permit denial. The application fee shall not be refunded.~~

~~3. Requirements for Construction of a Permitted Outdoor Advertising Device.~~

~~(i) If a permit is issued, the permit holder must erect the support structure and attach the sign face at the approved location within one hundred and eighty (180) days from the date the permit is issued. A copy of the approved application must be on-site in the possession of the permit holder, or any person acting on behalf of the permit holder during the construction of the device. If the device is not fully constructed within the one hundred eighty (180) day period, the permit shall be voidable.~~

~~(ii) The dimensions of the sign face on the outdoor advertising device, as built, must conform to the dimensions of the proposed sign face as described in the approved application. If the permit holder does not construct the sign face in accordance with the approved application, the permit shall be voidable.~~

~~(iii) The tag must be affixed to the outdoor advertising device and visible from the main traveled way of the highway on which the outdoor advertising device is permitted. If the tag is not attached and visible as required, the outdoor advertising permit for that device shall be voidable; provided, however, if the growth of vegetation on the highway right-of-way subsequently prevents visibility of the tag from the main traveled way of the highway, the Department may waive this visibility requirement.~~

~~(iv) Neither the permit holder nor any person acting on behalf of the permit holder shall obtain access to the site of the outdoor advertising device by direct ingress and egress across the state highway right-of-way, nor shall the permit holder or any such person use any part of the State's highway right-of-way, to erect or maintain the outdoor advertising device. No equipment used by the permit holder or any such person to construct or maintain the outdoor advertising device shall encroach upon the right-of-way. Removal of any access control fence or any breach of the Department's right of access control is strictly prohibited. If any of these provisions are violated, the permit shall be voidable.~~

~~(v) It is the responsibility of the permit holder to locate the state highway right- of-way property line. No outdoor advertising device shall under any circumstances be allowed on the State's highway right-of-way. Any outdoor advertising device located partly or entirely on the State's highway right-of-way shall be considered an encroachment subject to removal at the owner's expense under the provisions of Tennessee Code Annotated~~
~~§ 54-5-136.~~

~~4. Voiding of Permits.~~

~~(i) The Commissioner has the authority to void an outdoor advertising permit under the following conditions:~~

~~(I) Any negligent or intentional misrepresentation of material fact on any application submitted pursuant to these Rules;~~

~~(II) Any violation of one or more of the requirements for a permit under Federal or State law or these Rules.~~

~~(ii) In the event the Department deems a permit voidable under these Rules, the Department shall give notice either by certified mail or other form of~~

~~return receipt mail or by personal service to the permit holder; provided, however, that notice shall be deemed effective if the permit holder refuses to accept delivery of the certified mail or other return receipt mail. Such notice shall identify the alleged violation that renders the permit voidable; specify the remedial action, if any, which is required to correct the violation; and advise that failure to complete the remedial action within thirty (30) days or to request a hearing to contest the alleged violation within thirty~~
~~(30) days will result in the permit becoming void, the right to a hearing waived, and the outdoor advertising device subject to removal.~~

~~(iii) Once a permit is issued for a location, the Department will not void a permit based on a change in property ownership or the lack of consent of the property owner for the permit owner to operate and maintain an outdoor advertising device at this location unless the permit holder requests that the permit be voided or there is a court order stating, in effect, that the permit holder has no legal right to operate or maintain an outdoor advertising device at that location.~~

~~5. Administrative Hearings.~~

~~(i) If an application for an outdoor advertising permit is processed by the Department and subsequently denied, or if the permit for an existing device has been deemed void or voidable under these Rules, the applicant shall have thirty (30) days from the date of the receipt of the denial letter or notice to request, in writing, an administrative hearing concerning the grounds upon which the permit was denied or is deemed to be voidable. The request for hearing shall state the specific facts and provisions of law upon which the applicant relies to contest the denial or voiding of the permit.~~

~~(ii) If an administrative hearing is requested in the allotted time to contest the denial of an application for a permit, the application shall remain in a pending status until the matter has been finally adjudicated by a final administrative order, a final court order upon judicial review, or by agreement of the parties.~~

~~(iii) If an administrative hearing is requested in the allotted time to contest the grounds upon which the Department has deemed a permit to be voidable, the permit shall not be eligible for renewal and shall be placed in a pending status until the matter has been finally adjudicated by a final administrative order, a final court order upon judicial review, or by agreement of the parties. If the final order or agreement results in reinstatement of the permit, the permit holder shall be responsible for payment of all annual permit renewal back fees from the date of the hearing request. After the back fees are paid, the permit will be returned to active status and shall be eligible for renewal.~~

~~(iv) A hearing on the denial or proposed voiding of an outdoor advertising permit shall be conducted as provided in the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, et seq., and the Rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-4-1.~~

~~(v) The return of an application, and any accompanying materials, without processing in accordance with these Rules is not a final administrative action subject to appeal or an administrative hearing. Accordingly, the Department shall not initiate or accept any request for an administrative hearing based on the return of an application or any accompanying materials without processing~~

~~(vi) The Department has no authority to resolve any dispute between the permit holder~~

~~and the current property owner concerning the terms of the permit holder's lease or any other claim the permit holder may have to remain on the property. Accordingly, the Department shall not initiate or accept any request for an administrative hearing to resolve any such dispute.~~

~~6. Replacement Tags for Outdoor Advertising Devices:~~

~~Replacements for stolen, vandalized, lost, or illegible tags may be obtained from the Headquarters Beautification Office. Requests for replacement tags must be made in writing and accompanied by a check or money order, payable to the Tennessee Department of Transportation, for the amount of the replacement tag fee as provided in Tennessee Code Annotated § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Headquarters Beautification Office).~~

~~7. Annual Renewal of Permits for Outdoor Advertising Devices:~~

~~(i) Permits shall be renewed annually between November 1st and December 31st.~~

~~(ii) For each permit that is to be renewed, the permit holder shall return the renewal form together with payment of the annual renewal fee by check or money order made payable to the Tennessee Department of Transportation and in the amount provided in Tennessee Code Annotated~~
~~§ 54-21-104 (provided that payment in cash will be accepted if personallydelivered to the Headquarters Beautification Office).~~

~~(iii) The permit holder shall notify the Headquarters Beautification Office of anychange in the permit holder's mailing address.~~

~~(iv) Permits and tags shall be voidable on January 1 of each year if not renewed by December 31 of the prior year.~~

~~(v) In the event that a permit holder fails to renew as provided in these Rules, the Department shall notify the permit holder of the violation, as provided in subparagraph (1)(a), part 9(ii) of this Rule. The notice shall state that the permit holder has thirty (30) days after receipt of the notice either to remove the device, request an administrative hearing to contest the violation, or to remedy the violation by applying for a new permit for the same location.~~

~~8. Transfer of Outdoor Advertising Permits.~~

~~(i) If a permit holder chooses to transfer a permit to another company or individual, the transfer request must be in writing and signed by the current permit holder and sent to the Headquarters Beautification Office. It must include a check or money order payable to the Tennessee Department of Transportation for the amount of the transfer fee as provided in Tennessee Code Annotated § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Headquarters Beautification Office).~~

~~(ii) Permits and tags are issued for a particular sign face and outdoor advertising location and may not be moved to or used for any other location.~~

(2) Restrictions on ~~O~~outdoor ~~A~~advertising devices adjacent to Interstate and Primary Highways ~~Systems~~ beyond six hundred sixty feet (660') ~~feet~~ of the nearest edge of the right-of-way outside of urban ~~limits~~areas ~~are as follows: Effective as of July 1, 1976~~.

(a) Control of outdoor advertising devices ~~and displays~~ extends to outdoor advertising devices ~~and displays~~ located beyond ~~660~~six hundred sixty feet (660') of the nearest edge of the right-of-way of highways on the ~~Federal-Aid I~~nterstate

(Rule 1680-02~~2~~6-03-.02,

and ~~P~~primary ~~S~~systems outside of urban areas erected with the purpose of their message being read from the main traveled way of such systems. Such ~~signs, displays, or~~outdoor advertising devices are prohibited, regardless of whether ~~or not~~located in commercial or industrial areas, unless they are of a class or type allowed within ~~660~~six hundred sixty feet (660') of the nearest edge of the right-of-way of such systems outside of commercial or industrial areas. To determine whether an outdoor advertising device has been erected for the purpose of having its message read from the main traveled way of a highway on the interstate or primary system, the Department will apply the factors identified in Rule 1680-06-03-.03(1)(b).

(b) Explanatory Note~~s~~:.

1. ~~An Urban Area, a~~As defined in Title 23, United States Code, Section 101, the term "urban area" means an urbanized area, or in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand (5,000) or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary of the United States Department of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census.

2. The term "urbanized area" means an area with a population of fifty thousand (50,000) or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

(3) Landmark Signs.

(a) Signs lawfully in existence on October 22, 1965, determined by the Commissioner, subject to the concurrence of the Secretary of Transportation of the United States, to ~~-~~be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this section, are not required to be removed. Landmark signs are exempt from permit and fee requirements.

(b) Explanatory Note~~:~~.

Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in the size, lighting, or message content will terminate its exempt status.

Authority: T.C.A. §§ 54-21-102, 54-21-~~104~~103, 54-21-~~105~~108, ~~and~~ 54-21-~~112~~111, 54-21-113, 54-21-118, and 54-21-119. Administrative History: Original rule certified June 10, 1974. Repeal and new rule filed June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989. Amendment filed December 21, 2006; effective March 6, 2007. Amendment filed September 24, 2008; effective December 8, 2008.

1680-06-03-.04 PERMITS, RENEWALS, AND ADMINISTRATIVE HEARINGS.

(1) Application Requirements for New Outdoor Advertising Device Permits.

(a) No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained, any outdoor advertising device

visible from the main traveled way of the ~~I~~interstate ~~S~~system~~, Federal Aid~~ or ~~P~~primary ~~S~~system,~~ or National Highway System~~ and subject to regulation under Title 54, Chapter 21 of the Tennessee Code, without first obtaining from the Department a permit and tag authorizing the same. An outdoor advertising device that is erected prior to obtaining the required permit shall be considered illegal and subject to removal at the expense of the owner as provided in T~~ennessee~~ C~~ode~~ A~~nnotated~~ § 54-21-105. The Department shall not require any additional permit under this subparagraph for an outdoor advertising device lawfully permitted, erected, and in operation under the Billboard Regulation and Control Act of 1972 prior to the effective date of the Outdoor Advertising Control Act of 2020.

(b) The outdoor advertising device permit application form and related forms may be viewed on the Department's ~~Beautification~~Outdoor Advertising Office website, which can be found at https://www.tn.gov/content/tn/tdot/right-of-way-division/outdooradvertising.html. An original permit application form and related forms may be obtained from ~~any of the following Beautification~~the Department's Outdoor Advertising Office~~s~~ at the following address:

~~Headquarters – Beautification~~Tennessee Department of Transportation
Outdoor Advertising Office
Suite 400, James K. Polk Bldg.
505 Deaderick Street
Nashville, TN 37243~~-0333~~
Telephone No. 615-741-2877
~~Fax No. 615-532-5995~~Email: TDOT.ODA@tn.gov

~~Region I - Beautification Office~~ ~~Region II - Beautification Office~~
~~7345 Region Lane~~
~~Knoxville, TN. 3790137914~~
~~Telephone No. 865-594-2451~~
~~Fax No. 865-594-6341~~ ~~Telephone No. 423-892-3430, Ext. 2293~~
~~Fax No. 423-899-1636~~

~~Region III - Beautification Office~~ ~~Region IV - Beautification Office~~
~~6601 Centennial Blvd.~~ ~~300 Benchmark Place~~
~~Nashville, TN. 37243-0360~~ ~~Jackson, TN. 38301-0429~~
~~Telephone No. 615-350-4389~~ ~~Telephone No. 731-935-0170~~
~~Fax No. 615-350-3966~~ ~~Fax No. 731-935-0208~~

(c) A complete original application for an outdoor advertising device permit must be hand delivered or mailed to the Department's ~~Headquarters Beautification~~Outdoor Advertising Office in Nashville at the address indicated above. No faxed or emailed application materials will be accepted.

(d) In addition to a completed application form, a complete application for an outdoor advertising device permit shall also include the following; provided, however, that an outdoor advertising device that was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation is exempt from the requirements established in parts 2 and 3 of this subparagraph (d), as provided in T.C.A. § 54-21-104:

1. Payment of the application fee by check or money order made payable to the Tennessee Department of Transportation and in the amount established in T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the ~~Headquarters Beautification~~Outdoor Advertising Office in Nashville);

2. A map or scaled drawing ~~which shows~~that indicates and labels the following:

   (i) The property lines of the real property within which the outdoor advertising device is to be located;

   (ii) The location of the regulated highway(s) on the interstate or primary system along which the outdoor advertising device permit is requested and any other public roads adjacent to the property;

   (iii) The location and property lines of the State's highway right-of-way;

   (iv) The location of the proposed outdoor advertising device within the property; and

   (v) The public road, driveway, or other means by which the applicant can obtain access to the real property where the proposed outdoor advertising device is to be located without using direct ingress and egress across or using any part of the state highway right-of-way.

3. A signed and notarized affidavit from the property owner or permanent easement owner (on a form provided by ~~any of~~ the ~~Beautification~~Outdoor Advertising Office~~s listed above~~), as follows:

   (i) If the applicant is the property owner~~ or the owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property~~, the affidavit shall:

      (I) Certify the applicant's ownership interest in the property; and

      (II) Attach a copy of the applicant's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print-out of this document. The name of the property owner on the application must match the property owner's name on the affidavit exactly as the name on the property record card; provided, however, that the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date.

   (ii) If the applicant is the owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:

      (I) Certify the applicant's easement interest in the property;

      (II) Attach a copy of the deed granting the applicant a permanent easement right to construct and operate an outdoor advertising device on the property. The name of the easement owner on the application must match the easement owner's name on the affidavit exactly as the easement owner's name on the deed granting the easement; and

      (III) Attach a copy of the most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a printout of this document. Alternatively, the applicant may submit evidence, e.g., a

copy of a deed or bill of sale, demonstrating that the name on the property record is out of date.

(ii~~i~~) If the applicant is not the property owner or owner of a permanent easement granting the applicant the right to construct and operate an outdoor advertising device on the property, the affidavit shall:

(I) Certify that the property owner or owner of the permanent easement has given the applicant permission to construct and operate the proposed outdoor advertising device at the proposed location, or that a lessee or other person authorized by the property owner or owner of the permanent easement has given such permission, in which case the applicant shall provide an affidavit jointly signed by the property owner or owner of the permanent easement and the lessee or other person attesting that such permission has been given; and

(II) Attach a copy of the property owner's most recent property record in the Assessor of Property's Office of the county in which the property is located. If this record is available online, the Department will accept a print~~-~~out of this document. In addition, if applicable, attach a copy of the deed granting the permanent easement right to construct and operate an outdoor advertising device on the property. If the joint affidavit is signed by the property owner, the name of the property owner on the application must match the property owner's name on the affidavit exactly as the name on the property record card; provided, however, that the applicant may submit evidence, e.g., a copy of a deed or bill of sale, demonstrating that the name on the property record is out of date. If the joint affidavit is signed by the owner of the permanent easement, the name of the easement owner on the application must match the easement owner's name on the affidavit exactly as the easement owner's name on the deed granting the permanent easement

(e) The applicant shall mark the proposed location of the outdoor advertising device in the field by placing a stake in the ground, the top of which shall be not less than four (4) feet above ground level, at the precise location on the owner's property where the device is proposed to be located; provided, however, that if the proposed location of the device is in a paved area, the precise location shall be marked on the pavement in paint. The stake or mark shall identify the applicant. An outdoor advertising device that was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation is exempt from the requirements of this subparagraph (e), as provided in T.C.A. § 54-21-104.

(2) Processing of Applications.

(a) No application for an outdoor advertising device permit will be considered unless the completed application form and all other documents required by these ~~R~~rules have been filed in the ~~Headquarters Beautification~~Department's Outdoor Advertising Office in Nashville. ~~An incomplete application will not be considered.~~It is the applicant's responsibility to verify that all information and documents required for a complete application are accurate and complete.

(b) If the application is incomplete or defective on its face, the Department shall notify the applicant regarding the application's incomplete or defective status no later than fifteen (15) days after receipt of the filed application. The notice shall indicate the

information or documentation that is needed to complete or correct the application. The notice shall give the applicant a deadline of fifteen (15) days after the date the written notice is sent, or to the end of the next regular business day if the fifteenth (15th) day falls on a weekend or official state holiday, within which to complete or correct the filed application. If the applicant fails to complete or correct the application by the established deadline, the application shall be considered incomplete and shall be returned without further processing, as provided below. The applicant shall be responsible for verifying that the entire application package is accurate and complete, notwithstanding any action or omission by the Department, and the applicant shall not be given a second opportunity to complete or correct the filed application. This shall not be construed to prevent the applicant from submitting a subsequent application for a permit at the same location.

(~~b~~c) All documents included with an incomplete application shall be returned to the applicant without being processed, and the application fee shall be returned or refunded. If the incomplete application is accompanied by any other documents pertaining to the permitting of any outdoor advertising device, including without limitation a request to cancel another outdoor advertising device permit or the cancellation of a previous request for hearing, the entire package will be returned to the applicant with the incomplete application without being processed.

(~~c~~d) If an application is withdrawn or returned for any reason, and the applicant chooses to resubmit the application, the subsequently filed application, if complete, shall be processed as a new application as of the date it is received and shall be given a new application number.

(~~d~~e) The return of an incomplete application, and any accompanying materials, without processing in accordance with these ~~R~~rules is not a final administrative action subject to appeal or an administrative hearing.

(~~e~~f) Complete applications will be considered on a first come, first served basis and processed in order of time stamped at the ~~Headquarters Beautification~~Department's Outdoor Advertising Office upon receipt.

(g) The Department will use its best efforts to process an application, in accordance with these rules, within no greater than sixty (60) days after receipt of a complete application. If a decision either to issue or deny the permit cannot be made within sixty (60) days, the Department will contact the applicant prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to process the application.

(~~f~~h) Upon determining that an application is complete, the ~~Headquarters Beautification~~Outdoor Advertising Office will forward the complete application to ~~the Beautification Office~~ Department personnel assigned to conduct a field inspection.

(~~g~~i) Upon receiving a complete application, the assigned ~~Beautification~~Department personnel will initiate a field inspection of the proposed location for the outdoor advertising device.

(~~h~~j) If ~~Beautification~~the Department ~~personnel~~ finds that the actual proposed location is not marked on the pavement or staked in the field by a stake as required in these ~~R~~rules, the ~~Beautification personnel will so notify the Headquarters Beautification~~Outdoor Advertising Office will be notified, and the application will be denied. Prior to denying an application, the ~~Beautification personnel~~Department will attempt to contact the applicant so that the defect may be cured.

(~~i~~k) If~~ Beautification~~ the proposed location is marked or staked as required, the

Department ~~personnel~~will complete the field inspection. ~~find~~If the field inspection indicates that the proposed outdoor advertising device location would fail to meet the minimum spacing required by law due to a conflict with the location of an earlier filed application, or with the location of an existing permit that the Department has deemed voidable under these ~~R~~rules, the ~~Beautification personnel shall not complete the field inspection on the later filed application and shall notify the Headquarters Beautification~~Outdoor Advertising Office will be notified that a minimum spacing conflict exists.

(~~i~~l) Because applications must be considered on a first come, first served basis, the ~~Headquarters Beautification Office~~Department shall proceed as follows ~~upon being notified that~~when a minimum spacing conflict exists:

1. If an application is submitted for a proposed location that has a minimum spacing conflict with the location proposed in an earlier filed application, the ~~Headquarters Beautification Office~~Department shall first determine whether to grant or deny the permit requested in the earlier filed application and proceed as follows:

   (i) If the earlier filed application is granted, the ~~Headquarters Beautification Office~~Department shall deny the later filed application.

   (ii) If the earlier filed application is denied, the later filed application will not be processed until such time as the earlier applicant has an opportunity to request a hearing on the denial and then as follows:

      (I) If the earlier applicant makes a timely request for a hearing, the later filed application, including the application fee and all documents accompanying the application shall be returned to the applicant without processing.

      (II) If the earlier applicant does not make a timely request for hearing, the later filed application will be processed and either granted or denied in accordance with these ~~R~~rules.

2. If an application is submitted for a proposed location that has a minimum spacing conflict with the location of an existing outdoor advertising device having a permit that the Department has deemed voidable under these ~~R~~rules, but which remains in a pending status because the holder of the permit still has the opportunity to undertake remedial action or to request a hearing, or because the holder of the permit has requested a hearing but the case has not been finally adjudicated, the application for the new outdoor advertising device permit, including the application fee and all documents accompanying the application, shall be returned to the applicant without processing.

(~~k~~m) If the proposed location is properly marked on the pavement or staked in the field and there does not appear to be any minimum spacing conflict with a pending application or permit, ~~Beautification~~the Department ~~personnel~~ will complete the field inspection in consideration of the zoning, spacing and other requirements for permitting an outdoor advertising device under these ~~R~~rules.

(~~l~~n) Apart from the failure to meet any other requirement of these ~~R~~rules, if it is determined by the ~~Beautification personnel~~Department that the applicant is unable to obtain access to the proposed location to erect and maintain an outdoor advertising device except by direct ingress and egress across the state highway right of way, or by breaching the State's right of access control, if any, or by using some part of the State's right-of-way, then the application shall be denied.

(~~m~~o) Upon completing the field inspection, ~~Beautification personnel will submit~~ a written field inspection report will be submitted to the ~~Headquarters Beautification~~Outdoor Advertising Office.

(~~n~~p) The ~~Headquarters Beautification~~Outdoor Advertising Office will review the field inspection report ~~for~~to verify that it is complete~~ness~~ and accura~~cy~~te. . If not, the report will be returned for additional field inspection work. If the report is complete and accurate, ~~T~~the ~~Headquarters Beautification Office~~Department shall make the determination to grant or deny the requested outdoor advertising permit ~~and shall notify the relevant Beautification Office of its decision.~~

(~~o~~q) If the ~~Headquarters Beautification Office~~Department grants the permit, a serially numbered permit and metal tag will be issued to the applicant. The permit and metal tag shall be issued only for the specific outdoor advertising sign face identified on the approved application and only for the precise location footprint as marked on the pavement or as staked in the field. Under no circumstances shall a permit and/or tag be used for or moved to any other location.

(~~p~~r) If the ~~Headquarters Beautification Office~~Department decides to deny the permit, the Department will send a copy of the disapproved application to the applicant with a letter explaining the reason for the permit denial. The application fee shall not be refunded. The applicant shall have a right to appeal the denial of the permit as provided Rule 1680-06-03-.04(8) below.

(s) If an outdoor advertising device was not subject to regulation under Title 54, Chapter 21, of the Tennessee Code at the time it was erected but has been subsequently brought under such regulation, the Department shall process the application as provided in T.C.A. § 54-21-104(b)(2).

1. The application must be accompanied by payment of the application fee set in T.C.A. § 54-21-104(b)(2)(C).

2. The Department shall not deny a permit for an existing outdoor advertising device under this subparagraph (s) solely because the outdoor advertising device does not meet the size, lighting, spacing, or zoning criteria that are required for new outdoor advertising devices under current law and regulations.

3. An application for a permit may be denied on other grounds under this subparagraph (s) only as otherwise provided in current law or regulations, including as follows:

   (i) The outdoor advertising device is located within or encroaches upon state highway right-of-way;

   (ii) There is no access to the outdoor advertising device for maintenance or operational purposes except by direct access from state highway right-of-way or across the state's access control limits;

   (iii) The applicant for the permit is subject to enforcement action under T.C.A. § 54-21-105(c); or

   (iv) Issuance of the permit would violate federal law.

4. If the Department determines that the permit should be denied on any of the grounds provided in part 3 above, the Department will proceed as follows:

(i) Before denying the permit, the Department shall notify the applicant in writing of the violation or circumstance that prevents issuance of the permit. The notice shall also give the applicant a reasonable amount of time to undertake such action, if any, that would cure the violation. At a minimum, the notice shall state that the applicant has forty-five (45) days within which to complete the remedial action or to request an administrative hearing to contest the proposed denial.

(ii) Upon written request of the applicant, and for good cause shown, the Department may extend the time for completing the remedial action for up to an additional one hundred fifty (150) days, which may be made subject to the condition that the applicant remove all advertising content from the device.

(iii) If the applicant cures the violation, the Department shall issue the permit, but if the applicant fails to cure the violation, the Department shall deny the permit.

5. Any permit that is issued under this subparagraph (s) must indicate whether the outdoor advertising device is characterized and regulated as a conforming or nonconforming device under these rules based upon the conditions and laws in effect on the date of the Department's field inspection. The Department shall notify the applicant in writing of the reason or reasons for characterizing a device as nonconforming.

6. The applicant has the right to appeal the Department's decision in accordance with this rule and the applicable provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, of the Tennessee Code.

(3) Application Requirements for Changeable Message Signs with a Digital Display.

(a) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. The Department shall not require any additional permit under this subparagraph for an outdoor advertising device with a digital display lawfully permitted, erected, and in operation under the Billboard Regulation and Control Act of 1972 prior to the effective date of the Outdoor Advertising Control Act of 2020.

(b) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location as provided in T.C.A. § 54-21-104(b)(3) and this paragraph (3). An outdoor advertising device authorized by a valid permit from the Department that was effective on September 10, 2019, and has been upgraded to a changeable message sign with a digital display between September 11, 2019, and June 22, 2020, the effective date of the Outdoor Advertising Control Act of 2020, is required to apply for an addendum to the permit in accordance with this subparagraph. The Department shall charge an application fee of seventy dollars ($70.00) for the addendum to the permit and shall process the application in the same manner as provided for an original permit under subparagraph (2)(s).

(c) The Commissioner shall under no circumstances permit or authorize any person to erect, operate, use, or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or

in any nonconforming location.

(d) Notwithstanding any other law to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subparagraphs (a) or (b) has up to, but no more than, twelve (12) months after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign; provided, however, that prior to the expiration of this twelve-month period, and upon making application to the Commissioner and paying an additional permit fee in the amount of two hundred dollars ($200), the permit holder may obtain an additional twelve (12) months within which to erect and begin displaying an outdoor advertising message on the changeable message sign. This additional two-hundred-dollar ($200) fee is separate from any annual permit renewal fee required under § 54-21-104. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within the required time, or as extended, the permit or addendum to the permit will be revoked and the changeable message sign with the digital display must be removed by the applicant or subject to removal by the Commissioner as provided in § 54- 21-105.

~~Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on the effective date of this act, until a separate form is available~~

(~~3~~4) Requirements for Construction of a Permitted Outdoor Advertising Device.

(a) If a permit is issued, the permit holder must erect the support structure and attach the sign face at the approved location within one hundred and eighty (180) days from the date the permit is issued. A copy of the approved application must be on-site in the possession of the permit holder, or any person acting on behalf of the permit holder during the construction of the device. If the device is not fully constructed within the one hundred eighty (180) day period, the permit shall be voidable.

(b) The dimensions of the sign face on the outdoor advertising device, as built, must conform to the dimensions of the proposed sign face as described in the approved application; provided, however, that upon giving prior written notice thereof to the Department's Outdoor Advertising Office the permittee may construct a sign face with dimensions that are smaller than the dimensions described in the approved application so long as the constructed sign face is at least twenty square feet (20 sq. ft.) in total area and both the sign face and the tag affixed to the device will be visible to the main traveled way of the highway. If the permit holder does not construct the sign face in accordance with the approved application or as modified in accordance with this subparagraph, the permit shall be voidable.

(c) The tag must be affixed to the outdoor advertising device and visible from the main traveled way of the highway on which the outdoor advertising device is permitted. If the tag is not attached and visible as required, the outdoor advertising permit for that device shall be voidable; provided, however, if after construction of the device the growth of vegetation on the highway right-of-way ~~subsequently~~ prevents visibility of the tag from the main traveled way of the highway, the Department may waive this visibility requirement.

(d) Neither the permit holder nor any person acting on behalf of the permit holder shall obtain access to the site of the outdoor advertising device by direct ingress and egress across the state highway right-of-way, nor shall the permit holder or any such person use any part of the State's highway right-of-way, to erect or maintain the outdoor advertising device. No equipment used by the permit holder or any such person to construct or maintain the outdoor advertising device shall encroach upon the right-of-way. Removal of any access control fence or any breach of the Department's right of

access control is strictly prohibited. If any of these provisions are violated, the permit shall be voidable.

(e) It is the responsibility of the permit holder to locate the state highway right-of-way property line. No outdoor advertising device shall under any circumstances be allowed on the State's highway right-of-way. Any outdoor advertising device located partly or entirely on the State's highway right-of-way shall be considered an encroachment subject to removal at the owner's expense under the provisions of T. ennessee C. ode A. nnotated § 54-5-136.

(5) Determining the Location of an Outdoor Advertising Device.

(a) For the purposes of issuing permits and regulating outdoor advertising devices in accordance with the Title 54, Chapter 21, of the Tennessee Code and these rules, the location of a permitted outdoor advertising device is determined by the location of the supporting monopole, or by the location of the supporting pole nearest to the highway in the case of a device erected on multiple supporting poles.

(b) Notwithstanding subparagraph (a), if a permitted multiple-pole device may be lawfully reconstructed, the replacement of the supporting poles with a monopole is not considered a change of location requiring a new permit if:

1. The permittee gives advance notice to, and receives the prior approval of, the Department before reconstructing the outdoor advertising device;

2. The monopole is erected within the line segment defined by the previous supporting poles; and

3. The location of the monopole meets applicable spacing requirements.

(46) Voiding of Permits.

(a) The Commissioner has the authority to void an outdoor advertising device permit under the following conditions:

1. Any negligent or intentional misrepresentation of material fact on any application submitted pursuant to these Rrules; or

2. Any violation of one or more of the requirements for a permit under Federal or State law or these Rrules.

(b) In the event the Department deems a permit voidable under these Rrules, the Department shall give notice either by certified mail or other form of return receipt mail or by personal service to the permit holder; provided, however, that notice shall be deemed effective if the permit holder refuses to accept delivery of the certified mail or other return receipt mail. Such notice shall identify the alleged violation that renders the permit voidable; specify the remedial action, if any, which is required to correct the violation; and advise that failure to complete the remedial action within thirtyforty-five (3045) days or to request a hearing to contest the alleged violation within thirtyforty-five (3045) days will result in the permit becoming void, the right to a hearing waived, and the outdoor advertising device subject to removal and other enforcement action under T.C.A. § 54-21-105.

(c) Once a permit is issued for a location, the Department will not void a permit based on a change in property ownership or the lack of consent of the property owner for the permit owner to operate and maintain an outdoor advertising device at this location unless the permit holder requests that the permit be voided or there is a court order

stating, in effect, that the permit holder has no legal right to operate or maintain an outdoor advertising device at that location.

(7) Investigations.

(a) If the Department has reason to believe that a sign is being operated, in whole or part, as an outdoor advertising device without first obtaining a permit as required under T.C.A. § 54-21-104, the Department may issue an investigative request to the owner or operator of the sign, the owner of the property, or any other person for the purpose of obtaining relevant documents or information to determine whether the sign is being operated as an outdoor advertising device.

(b) If, after being served with an investigative request by the Department under Subparagraph (a), the person provides the requested documents or information and the Department determines that the sign is being operated as an outdoor advertising device in violation of T.C.A. §§ 54-21-103 and 54-21-104, the Department shall issue a written order to the owner or operator of the outdoor advertising device explaining the basis for determining that the sign is an outdoor advertising device and directing the owner or operator of the device to remedy the violation by applying for the applicable outdoor advertising device permit, or by removing the unlawful device, as appropriate, by the date set forth in the order, which shall be no less than sixty (60) days after the date of the order.

(c) The person may appeal the Department's order under subparagraph (b) by filing a written notice of appeal with the Department within thirty (30) days of the date on which the order is issued. If an appeal is timely filed with the Department, the Department shall initiate a contested case proceeding under the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, to hear the person's appeal.

(d) If a person fails to comply with the Department's investigative request under subparagraph (a), or if the Department reasonably believes the documents or information provided are incomplete or inaccurate, the Department may initiate a contested case proceeding under the Uniform Administrative Procedures Act to compel the production of relevant documents or information and to determine whether the outdoor advertising device is being operated in violation of §§ 54-21-103 and 54-21-104 and therefore subject to enforcement action under § 54-21-105.

(~~5~~8) Administrative Hearings.

(a) If an application for an outdoor advertising device permit is processed by the Department and subsequently denied, or if the permit for an existing device has been deemed ~~void or~~ voidable under these ~~R~~rules, the applicant shall have ~~thirty~~forty-five (~~30~~45) days from the date of the receipt of the denial letter or notice to request, in writing, an administrative hearing concerning the grounds upon which the permit was denied or is deemed to be voidable. The request for hearing shall state the specific facts and provisions of law upon which the applicant relies to contest the denial or voiding of the permit.

(b) If an administrative hearing is requested in the allotted time to contest the denial of an application for a permit, the application shall remain in a pending status until the matter has been finally adjudicated by a final administrative order, a final court order upon judicial review, or by agreement of the parties.

(c) If an administrative hearing is requested in the allotted time to contest the grounds upon which the Department has deemed a permit to be voidable, the permit shall not be eligible for renewal and shall be placed in a pending status until the matter has

been finally adjudicated by a final administrative order, a final court order upon judicial review, or by agreement of the parties. If the final order or agreement results in reinstatement of the permit, the permit holder shall be responsible for payment of all annual permit renewal back fees from the date of the hearing request. After the back fees are paid, the permit will be returned to active status and shall be eligible for renewal.

(d) A hearing on the denial or proposed voiding of an outdoor advertising device permit shall be conducted as provided in the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, et seq., and the Rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-04-01.

(e) The return of an application, and any accompanying materials, without processing in accordance with these ~~R~~rules is not a final administrative action subject to appeal or an administrative hearing. Accordingly, the Department shall not initiate or accept any request for an administrative hearing based on the return of an application or any accompanying materials without processing.

(f) The Department has no authority to resolve any dispute between the permit holder and the current property owner concerning the terms of the permit holder's lease or any other claim the permit holder may have to remain on the property. Accordingly, the Department shall not initiate or accept any request for an administrative hearing to resolve any such dispute.

(~~6~~9) Replacement Tags for Outdoor Advertising Devices~~:~~.

Replacements for stolen, vandalized, lost, or illegible tags may be obtained from the ~~Headquarters Beautification~~Department's Outdoor Advertising Office. Requests for replacement tags must be made in writing and accompanied by a check or money order, payable to the Tennessee Department of Transportation, for the amount of the replacement tag fee as provided in ~~Tennessee Code Annotated~~T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the ~~Headquarters Beautification~~Outdoor Advertising Office in Nashville).

(~~7~~10) Annual Renewal of Permits for Outdoor Advertising Devices~~:~~.

(a) Permits shall be renewed annually between November 1st and December 31st.

(b) For each permit that is to be renewed, the permit holder shall return the renewal form together with payment of the annual renewal fee by check or money order made payable to the Tennessee Department of Transportation and in the amount provided in ~~Tennessee Code Annotated~~T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the ~~Headquarters Beautification~~Department's Outdoor Advertising ~~–~~Office in Nashville).

(c) The permit holder shall notify the ~~Headquarters Beautification~~Department's Outdoor Advertising Office of any change in the permit holder's mailing address.

(d) Permits and tags shall be voidable on January 1 of each year if not renewed by December 31 of the prior year.

(e) In the event that a permit holder fails to renew a permit as provided in these ~~R~~rules, the~~ Department shall notify the permit holder of the violation, as provided in subparagraph (1)(a), part 9(ii) of this Rule. The notice shall state that the permit holder has thirty (30) days after receipt of the notice either to remove the device, request an administrative hearing to contest the violation, or to remedy the violation by applying for a new permit for the same location.~~ permit will not be considered void until the

(Rule 1680-02~~2~~6-03-.02,

Department has given the permit holder notice of the failure to renew and the opportunity to correct the unlawfulness, as provided in T.C.A. §54-21-105(b). The Department must send the notice of the failure to renew within sixty (60) days after the failure to renew. The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within one hundred twenty (120) days of receipt of the notice. If a permit holder fails to renew the permit within this one hundred twenty (120) day notice period, then the permit is void and the outdoor advertising device is considered unlawful and subject to removal as further provided in T.C.A. § 54-21-105. The notice given by the Department must include the requirements for renewal and consequences of failure to renew as provided in this subparagraph (e).

(~~8~~11) Transfer of Outdoor Advertising Device Permits.

(a) If a permit holder chooses to transfer a permit to another company or individual, the transfer request must be in writing and signed by the current permit holder and sent to the ~~Headquarters Beautification~~Department's Outdoor Advertising Office. It must include a check or money order payable to the Tennessee Department of Transportation for the amount of the transfer fee as provided in ~~Tennessee Code Annotated~~T.C.A. § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the ~~Headquarters Beautification~~Outdoor Advertising Office in Nashville).

(b) Permits and tags are issued for a particular sign face and outdoor advertising device location and may not be moved to or used for any other location.

Authority: T.C.A. §§ 54-21-104, 54-21-105, and 54-21-111.

1680-02~~2~~6-03-~~.04~~.05 CONTROL OF NON-CON~~D~~FORMING ~~AND GRANDFATHERED NON-CONFORMING~~ OUTDOOR ADVERTISING DEVICES ~~ALONG THE INTERSTATE AND PRIMARY SYSTEM OF HIGHWAYS~~.

(1) Those outdoor advertising devices legally in existence on April 4, 1972, shall be entitled to remain in place and inuse until compensation for removal has been made.

(2) ~~Grandfathered non-conforming devices as defined in § 1680-02-03-.02, paragraph 11, and n~~Nonconforming devices as defined in ~~§~~Rule 1680-02~~2~~6-03-.02~~, paragraph 15,~~ may remain in place, subject to restrictions set forth herein, until such time as they may be purchased.

(~~a~~3) Restrictions on non-conforming ~~and grandfathered non-conforming~~ devices are as follows:

~~1.~~(a) Maintenance beyond customary maintenance will not be allowed. Customary maintenance is defined ~~as the replacement of the sign face or stringers, but not the replacement of any pole, post, or support structure~~ in Rule 1680-06-03-.02. Customary maintenance may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period.

~~2.~~(b) Under no circumstances may the location be changed.

~~3.~~(c) Extension or changing height above ground level or enlargement of the sign face will not be allowed.

~~4.~~(d) Lighting cannot be added to an unilluminated sign.

~~5.~~(e) Reflective material cannot be added to a~~n unreflectorized~~non-reflective sign.

(4) A lawfully permitted non-conforming device ~~or grandfathered non-conforming device~~ that has been destroyed or damaged beyond what may be repaired through customary maintenance may be rebuilt or repaired beyond customary maintenance only if all of the following conditions are satisfied:

(a) The destruction of or damage to the device must have been caused by vandalism or some other criminal or tortious acts, excluding any negligent or intentional acts of the permit holder or any party acting by permission of, with the knowledge of, or in concert with the permit holder and/or sign owner.

(b) No device may be rebuilt and/or repaired without the prior written approval of the ~~Regional Highway Beautification Office for the administrative region of the Tennessee Department of Transportation in which the device is located~~ Department.

(c) The current holder of the permit or sign owner, if different, must submit a written request for approval to the appropriate ~~Regional Highway Beautification~~the Department's Outdoor Advertising Office, whichwritten request must provide, at a minimum:

1. Proof of the date and cause of the destruction of and/or damage to the device, including a copy of the police report made with respect to the vandalism or other criminal or tortious act causing such destruction or damage; and

2. A general description of the manner in which it is proposed to rebuild and/or repair the device.

(d) No post, pole or other support structure, or any component of the device other than the sign face or stringers, will be approved for replacement or repair without proof that such post, pole, support structure, or other component of the device was destroyed or damaged by an act of vandalism or some other criminal or tortious act. The replacement or repair of destroyed components of the device under this subparagraph is separate and distinct from, and does not operate as limitation of, the provision for customary maintenance of such devices.

(e) The device must be rebuilt and/or repaired in such manner that it replicates the original device, including specifically as follows:

1. The rebuilt and/or repaired device must remain or be rebuilt in the exact same location as the original device; and

2. The rebuilt and/or repaired device must have the same height, size, and dimensions as the original device; and

3. Each post, pole, other support structure, or other component of the device, including the sign face and stringers, must be rebuilt and/or repaired with materials that replicate the materials used to construct that same component in the original device (e.g., wood for wood, steel for steel, etc.); and

4. No component may be added to the rebuilt device that was not permitted under the original device, including no lighting if theoriginal sign was not

illuminated, no reflective material if the original sign was not reflectorized, and no changeable message technology on the sign face if not included on the original sign.

(f) The rebuilding and/or repair of the device must be completed within twelve (12) months after the date on which the original device was destroyed and/or damaged or the device will be treated as an abandoned outdoor advertising device. Permittee must contact the Department's Outdoor Advertising Office for field inspection once rebuilding or repair has been completed.

(~~4~~5) Except as provided in ~~p~~Paragraph (~~2~~4) of this rule above, any previously permitted nonconforming device ~~or grandfathered non-conforming device~~ that is destroyed by natural disaster, natural attrition, or any other cause whatsoever shall not continue to be permitted under this Chapter.

(6) See illustrations at Rule 1680-06-03-.09, Appendix, for further descriptions of damaged nonconforming devices that are qualified for customary maintenance and destroyed nonconforming devices that are subject to removal.

Authority: T.C.A. §§ 54-21-102, 54-21-~~112~~111, and 54-21-120. Administrative History: Original rule certified June 10, 1974. Repealed and refiled June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989. Amendment filed February 1, 1989; effective March 18, 1989. Public Necessity rule filed March 13, 1989. Amendment filed February 1, 1989; effective March 18, 1989. Public Necessity rule filed August 1, 2006; effective October 1, 2006 through March 15, 2007. Amendment filed December 21, 2006; effective March 6, 2007.

~~1680-02-03-.05 DIRECTIONAL SIGNS. Directional devices must meet the following criteria:~~

~~Directional Signs shall not exceed the following size limits:~~

~~Maximum area - 150 square feet~~

~~Maximum height - 20 feet~~

~~Maximum length - 20 feet~~

~~All dimensions include border and trim, but exclude supports.~~

~~The lighting requirements are explained in §1680-02-03-.03.~~

~~Spacing of Directional Signs:~~

~~Each location of a directional sign must be approved by the Department.~~

~~No directional sign may be located within 2000 feet of an intersection or interchange at grade measured along the interstate system or controlled access highway. Measurement shall be made from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.~~

~~No directional sign may be located within 2000 feet of a rest area, parkland, or scenic area.~~

~~No two directional signs facing in the same direction of travel shall be spaced less than one (1) mile apart:~~
~~Not more than three (3) directional signs pertaining to the same activity facing the same direction of travel shall be erected along a single route approaching the activity.~~

~~Signs located adjacent to the Interstate System shall be within 75 air miles of the activity.~~

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~~Signs located adjacent to the Primary System shall be within 50 air miles of the activity.~~

~~Message Content - Directional Signs~~

~~The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, and exit numbers. Descriptive words or phrases and pictorial or photographic representations of the activity or its environs are prohibited.~~

~~Selection Methods and Criteria~~

~~In determining whether privately owned attractions or activities can be eligible fordirectional signing the following must be met:~~

~~The site must fall into one of the categories as listed in §1680-02-03-.02, paragraph 8.~~

~~The attraction or activity must document that it is nationally or regionally known in the Southeastern United States.~~

~~It must be determined that the activity or attraction is of outstanding interest tothe traveling public.~~

~~All applications for directional signing must be submitted to the Highway BeautificationHeadquarters Office in Nashville, Tennessee, whose personnel will determineeligibility.~~

~~If an application is approved, a metal identification tag will be issued at no cost to thesign owner. This tag will be displayed on the pole nearest the highway, at least four (4) feet off the ground and visible from the highway. This tag is a permanent identification of the sign.~~

~~The following directional devices are prohibited:~~

~~Signs advertising activities that are illegal under Federal or State Laws or regulations in effect at the location of such devices or at the location of such activities.~~

~~Devices located in such manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.~~

~~Devices which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.~~

~~Obsolete signs.~~

~~Devices which are structurally unsafe or in disrepair.~~
~~Devices which move or have any animated or moving parts.~~

~~Devices located in rest areas, parklands, or scenic areas.~~

~~Civic or Service Club Signs~~

~~Any civic or service club sign that is requested shall be approved by the Regional Engineer. Such requests shall be rejected if they encroach any primary or interstate right-of-way.~~

~~Criteria for civic or service signs are as follows:~~

~~The sign must be no larger than eight (8) square feet.~~

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~~The message must pertain only to a religious, charitable, or civic organization.~~

~~Such signs will not be placed in any intersection or in any other location that would block sight distance.~~

~~Authority: T.C.A. § 54-21-112. Administrative History: Original rule certified June 10, 1974. Repeal and new rule filed June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989. Amendment filed December 21, 2006; effective March 6, 2007.~~

1680-02~~2~~6-03-.06 ON-PREMISES ~~SIGNS~~DEVICES.

(1) General

(a) ~~Signs advertising the sale or lease of the property on which they are located and signs advertising activities conducted on the property upon which they are located are called "on- premise" signs. These are not required to be permitted as discussed in §1680-02-03-.03, 5.And 6., but are subject to the criteria listed below when determining whether a sign is an on- premise sign.~~On-premises devices are not subject to the zoning, size, lighting, or spacing regulations set out in Rule 1680-06-03.-03 or to the permitting requirements established in Rule 1680-06-03-.04. However, on-premises devices located along a designated scenic highway or parkway are subject to additional size and spacing restrictions as provided in T.C.A. §§ §§ 54-17-108 – 109 and §§ 54-17-205 – 54-17-206.

(b) To qualify as an on-premises device, a sign must meet the following requirements, as provided in the definitions set out in Rule 1680-06-03-.02, and as further detailed in subparagraphs (2) and (3), below:

1. The sign must be located

(i) Within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the facility that owns or operates the sign; or

(ii) Within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located; and, provided that:

(iii) For the purpose of applying this rule, the facility on or next to which an on-premises device is located must be:

(I) A commercial or industrial facility, or other facility open to the public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas, except that

(II) An activity conducted in a temporary structure or a structure operated only on a seasonal basis may be considered a facility for the purpose of allowing an on-premises device to be located on the same property, but the device is only allowed on a temporary basis during the period the facility is actually conducting activity; and

2. The owner or operator of the sign or the facility must not be receiving or intend to receive compensation from a third party or parties for the placement of a message

(Rule 1680-02~~2~~6-03-.02,

or messages on the sign.

~~Characteristics of an On-Premise Sign~~

~~A sign will be considered to be an on-premise sign if it meets the following requirements.~~

~~Premise - The sign must be located on the same premises as the activity or property advertised.~~

~~Purpose - The sign must have as its purpose (1) the identification of the activity, or its products or services, or (2) the sale or lease of the property on which the sign is located, rather than the purpose of general advertising.~~

(2) Premises Test

To qualify as an on-premises device, a sign must be on, or within fifty feet (50') of, the premises of the facility (i.e., the building or defined physical space, which may include a structure other than a building, together with any adjacent parking area), where the activities of the facility are conducted. The following criteria shall be used in determining whether a device is located on the ~~same~~ premises ~~as the activity or property advertised~~of the facility:

(a) The premises on which an activity is conducted is determined by physical facts rather than property lines. Generally, it is defined as the land occupied by the buildings or other physical uses essential to the activity, including such areas as are arranged and designed to be used in connection with such buildings or uses.

(b) The following will not be considered ~~to be~~ a part of the premises on which the activity is conducted, and any signs located on such land will be considered "off-premises" ~~advertising~~signs:~~.~~

1. Any land ~~which~~that is not used as an integral part of the ~~principle~~principal activity. This ~~would~~ includes but is not limited to, land ~~which~~that is separated from the activity~~,~~ by a roadway, highway, or other obstructions and not used ~~by~~to conduct the activity ~~and~~or land consisting of extensive undeveloped highway frontage ~~contiguous to the land~~not actually used ~~a commercial~~ by the facility to conduct the activity even though ~~it~~the land might be under the same ownership;~~.~~

2. Any land ~~which~~that is used for, or devoted to, a separate purpose unrelated to the ~~advertised~~principal activity. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, a residence, or farmstead uses or other than commercial or industrial uses having no relationship to the service station activity would not be part of the premises of the service station, even though under the same ownership;~~.~~ or

3. Any land ~~which~~that is:

(i) ~~a~~At some distance from the ~~principle~~principal activity, and

(ii) ~~i~~In closer proximity to the highway than the ~~principle~~principal activity, and

(iii) ~~d~~Developed or used only in the area of the sign site or between the sign site and the ~~principle~~principal activity, and

(iv) ~~o~~Occupied solely by structures or uses which are only incidental to

the ~~principle~~principal activity, and which serve no reasonable or integrated purpose related to the activity other than to attempt to qualify the land for on-premises signing purposes. Generally, these will be facilities such as picnic, playground, or camping areas, dog kennels, golf driving ranges, skeet ranges, common or private roadways or easements, walking paths, fences, and sign maintenance sheds.

(c) Narrow Strips

Where the sign site is located at or near the end of a narrow strip contiguous to the~~advertised~~ activity, the sign site shall not be considered part of the premises ~~on which the activity being advertised is conducted~~of the facility. A narrow strip shall include any configurations of land ~~which is such~~ that ~~it~~ cannot be put to any reasonable use relatedto the activity other than for signing purposes. In no event shall a sign site be considered part of the premises on which the ~~advertised~~ activity is conducted if it is located upon a narrow strip of land:

1. Which is non-building land, such as swamp land, marsh land, or other wet land,or

2. Which is a common or private roadway, or

3. Held by easement or other lesser interest than the premises where the ~~advertised~~ activity is located.

Note: On-premises ~~advertising~~devices may extend up to fifty feet (50') ~~feet~~ from the ~~principle~~principal activity as set forth above unless the area extends across a roadway.

(d) See illustration in Rule 1680-06-03-.09, Appendix, for further description of the location requirements for an on-premises device.

~~(1) Purpose Test~~

~~The following criteria shall be used for determining whether a sign has as its purpose (1) the identification of the activity located on the premises or its products or services, or (2) the sale or lease of the property on which the sign is located, rather than the business of outdoor advertising.~~

~~(a) General~~

~~1. Any sign which consists solely of the name of the establishment is an on-premise sign.~~

~~2. A sign which identifies the establishment's principle or accessory product or services offered on the premises is an on-premise sign.~~

~~3. An example of an accessory product would be a brand of tires offered for sale at a service station.~~

(3) Business of Outdoor Advertising

(a) ~~When an outdoor advertising device~~A sign shall not be considered an on-premises device, notwithstanding the location of the sign, and shall be considered an outdoor advertising device, if it is operated to earn compensation directly or indirectly from a third party or parties for the placement of a message on the sign.

(Rule 1680-02~~2~~6-03-.02,

~~(1) brings rental income to the property owner, or (2) consists principally of brand name or trade name advertising, or (3) the product or service advertised is only incidental to the principle activity, it shall be considered the business of outdoor advertising and not an on-premise sign. An example would be a typical billboard located on the top of a service station building that advertised a brand of cigarettes or chewing gum which is incidentally sold in a vending machine on the property.~~

(b) ~~An outdoor advertising device which advertises activities conducted on the premises, but which also advertises, in a prominent manner, activities not conducted on the premises, is not an on-premise sign. An example would be a sign advertising a motel or restaurant not located on the premises with a notation or attachment stating "Skeet Range Here," or "Dog Kennels Here." The on- premise activity would only be the skeet range or dog kennels.~~ In the case of a property on which two (2) or more facilities are located, a sign located at the entrance of the property, as provided in subpart (1)(b)1(ii) of this rule, will not be considered an outdoor advertising device operated to earn compensation directly or indirectly from a third party for the placement of a message on the sign so long as:

1. The owner or operator of the sign does not receive compensation for the display of a message from any person other than a facility that is located on the same property; and

2. The facility located on the property does not receive compensation from any other person for the display of a message on the sign located on the same property;

~~(b) Sale or Lease Signs~~

~~A sale or lease sign which also advertises any product or service not located upon and related to the business of selling or leasing the land on which the sign is located is not an on-premise sign. An example of this would be a typical billboard which states "THIS PROPERTY FOR SALE--- SMITHS MOTEL; 500 ROOMS, AIR CONDITIONED, TURN RIGHT 3 BLOCKS AT MA IN STREET."~~

Authority: T.C.A. §§ 54-21-~~23~~102, 54-21-103, and 54-21-111; and U.S.C. §131. Administrative History: Original rule certified June 10, 1974. Repeal and new rule filed June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989.

1680-02~~2~~6-03-.07 ~~-~~REMOVAL OF ABANDONED ~~SIGNS~~DEVICES.

(1) The permit for an abandoned outdoor advertising device shall be voidable after a twelve-month period of abandonment has elapsed~~.~~ , as follows:

(a) The permit for a device, or permits for a device with multiple sign faces, that for a period of twelve (12) months remains in substantial need of repair, which in the case of a wooden sign structure means that sixty percent (60%) or more of the upright supports of the sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or in the case of a metal sign structure that normal repair practices would call for replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support, is voidable after the device has remained in that condition for a period of twelve (12) months; provided, however, that a nonconforming device in a condition meeting these criteria will immediately be considered destroyed rather than abandoned and the permit for the device will be void;

(Rule 1680-02~~2~~6-03-.02,

(b) The permit for a device whose sign face remains damaged fifty percent (50%) or more, or in the case of a device with multiple sign faces, the permit for each sign face that remains damaged fifty percent (50%) or more, is voidable after the sign face has remained in that condition for a period of twelve (12) months;

(c) The permit for a device that has a blank sign face (i.e., no advertising message), or in the case of a device with multiple sign faces, the permit for each sign face that remains blank, is voidable after the sign face has remained in that condition for a period of twelve (12) months; or

(d) The permit for a device that has been removed from its permitted location is voidable if it has not been reconstructed in its permitted location within twelve (12) months after its removal; provided, however, that a nonconforming device that has been removed will immediately be considered destroyed rather than abandoned and the permit for the device will be void.

(2) The twelve-month period for establishing abandonment under subparagraphs (1)(a) – (d) may be waived or suspended during a period of involuntary discontinuance, such as the closing of a highway for repair in front of the sign; provided, however, that the termination of the permit holder's lease, easement, or other right or permission for access from the landowner shall not be grounds for waiver of the twelve-month period for establishing abandonment.

(3) An abandoned outdoor advertising device or sign face that no longer has an outdoor advertising permit is subject to removal or other enforcement action as provided in T.C.A. § 54-21-105.

(4) Before initiating an enforcement action based on abandonment, the Department will first send a written notice to the permit holder identifying the condition of the device that would constitute abandonment and the date on which the twelve-month period for establishing abandonment will begin. If the permit holder believes that a defense to the condition of abandonment exists, the permit holder shall notify the Department in writing, and the Department shall respond in writing. If the Department does not accept the defense and the condition of abandonment remains for twelve (12) months, the Department will send a written notice to the permit holder, as provided in Rule 1680-06-03-.04(6)(b), stating that the permit is voidable based on abandonment. The permittee shall have forty-five (45) days within which to appeal the decision, as provided in Rule 1680-06-03-.04(6)(b).

(5) See illustration in Rule 1680-06-03-.09, Appendix, for examples of abandoned devices.

Authority: T.C.A. §§ 54-21-102, 54-21-104, 54-21-105 and 54-21-~~112~~111. Administrative History: Original rule certified June 10, 1974. Repeal and new rule filed June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989. Amendment filed September 24, 2008; effective December 8, 2008.

1680-02~~2~~6-03-.08 VEGETATION CONTROL.

(1) ~~(1)~~ Definitions

(a) For the purpose of T.C.A. § 54-21-~~119~~116, "generally visible" or "general visibility" is defined as capable of being visible to occupants of vehicles using the main traveled way for some of the distance between the point where such capacity occurs and the location perpendicular to the outdoor advertising device.

(Rule 1680-02~~2~~6-03-.02,

(b) For the purpose of T.C.A. § 54-21-~~119~~116, "clearly visible" or "clear visibility" is defined as capable of advising of the message.

(2) ~~(2)~~ Administration

(a) T.C.A. § 54-21-~~119~~116, is construed as being in contemplation of an increase in the amount or size of vegetation within those adjacent portions of the right-of-way from which the face of an outdoor advertising device is capable of being visible to occupants of vehicles using the main traveled way existing on the date of erection of the outdoor advertising device, whereby such visibility becomes less than general visibility.

(b) When applications are made for vegetation control permits, the area of general visibility on the date of erection will be reviewed to determine whether such an increase in the amount and size thereof has occurred since the date of erection to warrant the issuance of a permit to attain clear visibility for an adjacent area of up to ~~500~~five hundred feet (500') within the area of general visibility. Vegetation ~~which~~that, on the date of erection of the outdoor advertising device, blocked the view of the outdoor advertising device ~~on the date of erection~~, in whole or in any part, for a distance not to exceed five hundred yards (500 yds.), to occupants of vehicles using the main traveled ways, ~~will~~is not ~~be~~ eligible for removal under a vegetation control permit.

(c) The vegetation control permit will authorize the permittee to remove, block cut, or trim vegetation located on the right-of-way adjacent to the outdoor advertising device, and replace the vegetation as directed, whenever the vegetation prevents clear visibility for a distance not to exceed five hundred yards (500 yds.) to occupants of vehicles using the main traveled ways of the controlled systems. The maximum area to be controlled shall not exceed five hundred feet (500').

(d) Each vegetation control permit will be subject, at a minimum, to the following conditions:

1. Permittee shall obtain any permits or approvals required by any regulatory agency having jurisdiction under federal, state, or local law over any work to be performed on the highway right-of-way, including without limitation any permits required under water quality regulations.

2. Normally, the permittee will be authorized to remove or control vegetation only through the use of mechanical methods; provided, however, that beginning on March 1, 2024, the Department may authorize the use of herbicides in specific circumstances, subject to strict conditions, including but not limited to the requirements that the use of any herbicide may be allowed only between March 1 and October 15 of each year and must be performed by a person who has a valid current pesticide applicator certification in the applicable service category for right-of-way pest control and has, or works under the direct supervision of a person who has, a valid current pest control operator license from the Tennessee Department of Agriculture.

3. Permittee shall notify any utility company that may be affected by the work, as required by law, including without limitation compliance with the Underground Utility Damage Prevention Act, T.C.A. § 65-31-101, et seq, if applicable.

4. Permittee shall comply with the provisions of the Manual on Uniform Traffic Control Devices, as adopted in TDOT Rule Chapter 1680-03-01, applicable to work being performed adjacent to highways.

5. Parking on or working from the shoulder of the highway may be authorized only by

special written permission from the Department. If authorization has been granted, a Shoulder Permit shall be attached to Vegetation Control Permit. Permittee's work forces must be present at all times any equipment is located on the shoulder.

6. There shall be no overnight parking of equipment on highway right-of-way, and no equipment shall be parked on the shoulder of the highway when the permittee's work forces are not present.

7. If the highway right-of-way is access-controlled, the permittee shall not obtain access to the right-of-way across the access control boundary, and the permittee shall not cut, remove, or damage any access control fence; provided, however, that the applicant may request the Department to permit a break in access control to obtain access to the right-of-way. If the applicant requests a break in access control, the applicant shall include as a part of the vegetation control permit application a written proposal, with photographs, showing why the break in access control is needed, how the applicant will obtain access to the property outside the access control boundary, and the proposed extent and duration of the break in access control. The applicant will not be granted a break in access control for the purpose of obtaining access to the property outside the access control boundary. The permittee will be required to provide a temporary barrier to protect access control when not on the job site and will be required to restore the access control fence to the Department's specifications promptly upon completion of the vegetation control work. In the event that the permittee, or the permittee's agent or representative, does unauthorized damage to a fence or any other public property in the work area, the permittee shall immediately repair or replace the same at the permittee's expense.

8. Any drainage tiles, culverts, or other drainage infrastructure must remain free and clear of cut brush, pulverized debris, or disturbed soil.

9. If any work authorized under the permit results in the exposure of bare soil on the state highway right-of-way, the permittee shall install erosion prevention and sediment control measures, including at a minimum the spreading of grass seed and straw on the soil. A mixture of native grasses or native plant seeds is recommended to promote native habitat restoration. Sowing of noxious weed seeds is strictly prohibited.

10. Trash and litter shall be picked up and removed from the highway right-of-way before mowing or bush-hogging; provided, however, that if the permittee discovers hazardous waste that cannot be taken to a landfill but instead requires specialized disposal (e.g., automobile batteries, tires, paint, medical waste, drug paraphernalia, etc.), the permittee shall promptly notify the Department and cease any mowing or bush-hogging in the area where such waste is present.

11. Upon completion of the work, all trimmed or cut vegetation, brush, limbs, or large debris must be removed from the highway right-of-way. Permittee may be allowed to use chippers and grinders to reduce trimmed and cut vegetation into pulverized material and left on the highway right-of-way. Large piles of pulverized material are to be spread across the ground in a thin layer. Any large limbs or debris remaining in whole or only partially ground up shall be removed from the highway right-of-way. All authorized vegetation removal shall be cut to ground level. Stumps above ground level must be removed by permittee.

12. The Department reserves the right to add special permit conditions based on the particular circumstances existing at the vegetation control site. However, the Department will not add general permit terms and conditions applicable to all permits beyond the items identified in this subsection (e) without first publishing the

proposed permit condition on the Department's Outdoor Advertising Office website and allowing at least thirty (30) days for public comment.

(e) Vegetation control permits issued pursuant to the Billboard Regulation and Control Act of 1972 shall be reinstated under the Outdoor Advertising Control Act of 2020. Alternatively, the owner of the device may apply for a new vegetation control permit, and the Department shall issue the permit in accordance with T.C.A. § 54-21-116 and this rule.

(3) ~~(3)~~ Application for Vegetation Control Permit.

(a) No person shall begin to cut, trim, or remove vegetation located on the right-of-way adjacentto outdoor advertising device without first obtaining a vegetation control permit from the ~~Highway Beautification~~Department's Outdoor Advertising Office. Vegetation control permits issued pursuant to the Billboard Regulation and Control Act of 1972 shall be reinstated under the Outdoor Advertising Control Act of 2020. Alternatively, the owner of the device may apply for a new vegetation control permit, and the Department shall issue the permit in accordance with T.C.A. § 54-21-116 and this rule.

(b) Before applying for a vegetation control permit, the applicant must verify that the issued tag for the permitted outdoor advertising device is posted on the device and visible from the main traveled way. Applications for devices without a visible tag will not be approved and the application fee will not be returned. A new replacement tag must be requested and posted on device before the applicant reapplies for a vegetation control permit.

(c) The following procedure will be followed in order to ~~obtain~~apply ~~a permit for~~ for a vegetation control permit:

~~(a)~~1. ~~r~~Request a vegetation control application form~~.~~;

~~(b)~~2. ~~r~~Return completed application to ~~Highway Beautification~~Outdoor Advertising Office, Department of Transportation, ~~Maintenance~~Right of Way Division, Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, TN~~.~~ ~~37219~~37243~~.~~, and ~~E~~enclose a check or money order made payable to the Tennessee Department of Transportation in the amount of one hundred dollars($100.00)~~ dollars. This is~~for each sign face as a non-refundable application fee~~.~~ and

~~(c) attach to application a copy of the current permit renewal form for the outdooradvertising around which vegetation control is requested.~~

~~(d)~~3. ~~applicant must also a~~Attach the following additional information:

~~1.~~(i) ~~a~~An 8"x10" or larger photograph showing the area in which vegetation control is proposed~~.~~;

~~2.~~(ii) ~~a~~A scale drawing showing vegetation proposed to be cut, trimmed, or removed~~.~~, and labeling ~~S~~such vegetation ~~should be labeled.~~;

~~3.~~(iii) ~~a~~A written proposal;

~~4.~~(iv) A scale drawing showing the propos~~al~~ed replacement vegetation plan~~.~~;

(v) If applicable, a written proposal, with photographs, showing why a break

in access control is needed, how the applicant will obtain access to the property outside the access control boundary, and the proposed extent and duration of the break in access control; and

(vi) If applicable, a written proposal in support of a request to use a herbicide, with the reason for requesting the use, the proposed location for herbicide use, the herbicide application plan, the name and pesticide applicator certification number of the person who will apply the herbicide, and the name and pest control license number of the person having supervisory responsibility for the herbicide application.

(d) The Department shall use best efforts to process an application for a permit, in accordance with this rule, within no greater than thirty (30) days after a completed application is received, as follows:

1. If the application is incomplete or defective on its face, the Department shall notify the applicant in writing no later than fifteen (15) days after receipt of the filed application of its incomplete or defective status and indicate the information or documentation that is needed to complete or correct the application.

2. If a decision to approve or deny the application cannot be made within thirty (30) days after receipt of the completed or corrected application, the Department shall contact the applicant prior to the expiration of the thirty (30) days to provide an explanation of the reasons why additional time is needed to process the application.

(e) If the application for the vegetation control permit is approved, the Department will send the applicant a written notice of approval, which shall identify the conditions applicable to the permit. The applicant shall notify the Department's Outdoor Advertising Office of the date on which the applicant wishes the permit to be issued. ~~If the vegetation control permit is granted~~In addition, the applicant must provide the following:

1. A check or money order in the amount of one hundred fifty dollars ($150.00) ~~dollars~~ per sign face made payable to the Tennessee Department of Transportation~~.~~ for supervision of the work; provided, however, that:

(i) One (1) vegetation control permit fee must be waived for those owners who voluntarily remove a nonconforming outdoor advertising device. If the nonconforming outdoor advertising device to be removed is not at least one hundred fifty square feet (150 sq. ft.) in size, two (2) nonconforming outdoor advertising devices must be removed to authorize waiver. The latter applies only when the outdoor advertising device around which control is to occur is larger than three hundred square feet (300 sq. ft.);

(ii) This waiver shall not be used as evidence in any future eminent domain proceeding relating to nonconforming outdoor advertising devices;

2. A surety bond~~.~~ (on a form ~~for this will be~~ provided by the Department) in the amount of five thousand dollars ($5,000) for each separate vegetation control permit; or in the alternative, the applicant may provide a running surety bond to cover multiple active vegetation control permits or vegetation maintenance permits at the applicable amount for each permit up to the maximum capacity of the bond; and

3. A certificate of insurance in the amount of not less than three hundred thousand dollars ($~~100,000~~300,000) for each personinjured and one million dollars ($~~300,000~~1,000,000) for each ~~accident~~occurrence, ~~plus $50,000~~

~~total property damage for each accident,~~ with such insurance to remain in full force and effect until work has been completed and approved by the Department.

(f) The permittee shall complete the authorized vegetation control within the time period specified in the permit, and in any event, the permittee shall complete the vegetation control within one (1) year after the date on which the application was approved; otherwise, the application approval and permit is void. Furthermore, ~~if a vegetation control permit is issued~~ the applicant shall abide by all conditions imposed by the ~~Tennessee~~ Department ~~of Transportation~~, as set forth onthe face of the permit, or ~~suffer~~incur permit revocation and other consequences of law. (See illustrations in Rule 1680-06-03-.09, Appendix.)

(g) ~~Vegetation control permits will be issued each year from October 1 through April 15. All work must be completed by April 15th. The Highway Beautification Office will accept vegetation control applications on September 1 of each year.~~ The Department will accept applications and issue vegetation control permits to allow vegetation control activities on a year-round basis; provided, however, if replacement vegetation is required, a vegetation control permit may be issued only between October 1 and April 15. If the Department authorizes the use of any herbicide as a method of vegetation control, the vegetation control permit may be issued only between March 1 and October 15.

(4) Application for Vegetation Maintenance Permit

(a) If a vegetation control permit has been issued for an outdoor advertising device, the holder of the permit may apply each subsequent year for a vegetation maintenance permit to provide annual maintenance at any one (1) location that is consistent with the original vegetation control permit.

(b) Before applying for a vegetation maintenance permit, the applicant must verify that the issued tag for the permitted outdoor advertising device is posted on the device and visible from the main traveled way. Applications for devices without a visible tag will not be approved and the application fee will not be returned. A new replacement tag must be requested and posted on device before the applicant reapplies for a vegetation maintenance permit.

(c) The following procedure shall be followed to apply for a vegetation maintenance permit:

1. Request a vegetation maintenance application form;

2. Return completed application to Outdoor Advertising Office, Department of Transportation, Right of Way Division, Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243., and enclose a check or money order made payable to the Tennessee Department of Transportation in the amount of fifty dollars ($50.00) as a non-refundable fee; and

3. Attach the following information:

(i) Copy of the original issued vegetation control permit or copy of last issued vegetation maintenance permit;

(ii) An 8”x10” or larger photograph showing the area in which vegetation control is proposed;

(iii) A scale drawing showing vegetation proposed to be cut, trimmed, or

removed, and labeling such vegetation;

(iv) A written proposal;

(v) A scale drawing showing the proposed replacement vegetation plan;

(vi) If applicable, a written proposal, with photographs, showing why a break in access control is needed, how the applicant will obtain access to the property outside the access control boundary, and the proposed extent and duration of the break in access control; and

(vii) If applicable, a written proposal in support of a request to use a herbicide, with the reason for requesting the use, the proposed location for herbicide use, the herbicide application plan, the name and pesticide applicator certification number of the person who will apply the herbicide, and the name and pest control license number of the person having supervisory responsibility for the herbicide application.

(d) If the application for a vegetation maintenance permit is approved, the Department will send the applicant a written notice of approval, which shall identify the conditions applicable to the permit. Prior to issuance of the permit, the applicant must provide the following:

1. A surety bond (on a form provided by the Department) in the amount of two thousand five hundred dollars ($2,500) for each separate vegetation maintenance permit; or in the alternative, the applicant may provide a running surety bond to cover multiple active vegetation control permits or vegetation maintenance permits at the applicable amount for each permit up to the maximum capacity of the bond; and

2. A certificate of insurance in the amount of not less than three hundred thousand dollars ($300,000) for each person injured and one million dollars ($1,000,000) for each occurrence, with such insurance to remain in full force and effect until work has been completed and approved by the Department.

(e) Furthermore, if a vegetation maintenance permit is issued, the applicant shall abide by all conditions imposed by the Department, as set forth on the face of the permit, or incur permit revocation and other consequences of law. The vegetation maintenance permit will be subject, at a minimum, to the following conditions:

1. Permittee shall obtain any permits or approvals required by any regulatory agency having jurisdiction under federal, state, or local law over any work to be performed on the highway right-of-way, including without limitation any permits required under water quality regulations.

2. Normally, the permittee will be authorized to remove or control vegetation only through the use of mechanical methods; provided, however, that beginning on March 1, 2024, the Department may authorize the use of herbicides in specific circumstances, subject to strict conditions, including but not limited to the requirements that the use of any herbicide may be allowed only between March 1 and October 15 of each year and must be performed by a person who has a valid current pesticide applicator certification in the applicable service category for right-of-way pest control and has, or works under the direct supervision of a person who has, a valid current pest control operator license from the Tennessee Department of Agriculture.

3. Permittee shall notify any utility company that may be affected by the work, as

required by law, including without limitation compliance with the Underground Utility Damage Prevention Act, T.C.A. § 65-31-101, et seq, if applicable.

4. Permittee shall comply with the provisions of the Manual on Uniform Traffic Control Devices, as adopted in TDOT Rule Chapter 1680-03-01, applicable to work being performed adjacent to highways.

5. Parking on or working from the shoulder of the highway may be authorized only by special written permission from the Department. If authorization has been granted, a Shoulder Permit shall be attached to Vegetation Control Permit. Permittee's work forces must be present at all times any equipment is located on the shoulder.

6. There shall be no overnight parking of equipment on highway right-of-way, and no equipment shall be parked on the shoulder of the highway when the permittee's work forces are not present.

7. If the highway right-of-way is access-controlled, the permittee shall not obtain access to the right-of-way across the access control boundary, and the permittee shall not cut or remove any access control fence; provided, however, that the applicant may request the Department to permit a break in access control to obtain access to the right-of-way. If the applicant requests a break in access control, the applicant shall include as a part of the vegetation maintenance permit application a written proposal, with photographs, showing why the break in access control is needed, how the applicant will obtain access to the property outside the access control fence, and proposed extent and duration of the break in access control. The applicant will not be granted a break in access control for the purpose of obtaining access to the property outside the access control fence. The permittee will be required to provide a temporary barrier to protect access control when not on the job site and will be required to restore the access control fence to the Department's specifications promptly upon completion of the vegetation maintenance work. In the event that the permittee, or the permittee's agent or representative, does unauthorized damage a fence or any other public property in the work area, the permittee shall repair or replace the same at the permittee's expense.

8. Any drainage tiles, culverts, or other drainage infrastructure must remain free and clear of cut brush, pulverized debris, or disturbed soil.

9. If any work authorized under the permit results in the exposure of bare soil on the state highway right-of-way, the permittee shall install erosion prevention and sediment control measures, including at a minimum the spreading of grass seed and straw on the soil. A mixture of native grasses or native plant seeds is recommended to promote native habitat restoration. Sowing of noxious weed seeds is strictly prohibited.

10. Trash and litter shall be picked up and removed from the highway right-of-way before mowing or bush-hogging; provided, however, if the permittee discovers hazardous waste that cannot be taken to a landfill but instead requires specialized disposal (e.g., automobile batteries, tires, paint, medical waste, drug paraphernalia, etc.), the permittee shall promptly notify the Department and cease any mowing or bush-hogging in the area where such waste is present.

11. Upon completion of the work, all trimmed or cut vegetation, brush, limbs, or large debris must be removed from the highway right-of-way. Permittee may be allowed to use chippers and grinders to reduce trimmed and cut vegetation into pulverized material and left on the highway right-of-way. Large piles of pulverized material are to be spread across the ground in a thin layer. Any large limbs or debris remaining in whole or only partially ground up shall be removed from the highway right-of-

way. All authorized vegetation removal shall be cut to ground level. Stumps above ground level must be removed by permittee.

12. The Department reserves the right to add special permit conditions based on the particular circumstances existing at the vegetation control site. However, the Department will not add general permit terms and conditions applicable to all permits beyond the items identified in this subsection (e) without first publishing the proposed permit condition on the Department's Outdoor Advertising Office website and allowing at least thirty (30) days for public comment.

(f) The Department will accept applications and issue ~~V~~vegetation ~~control~~ maintenance permits ~~will be issued~~on a year-round basis ~~year round and between April 15 and October 1 provided no replacement vegetation is required~~. If the Department authorizes the use of any herbicide as a method of vegetation control, the vegetation maintenance permit will only be issued between March 1 and October 15.

(5) Enforcement of Vegetation Control

(a) The Commissioner may revoke, suspend, or modify any vegetation control permit or vegetation maintenance permit for cause, including violation of any terms or conditions of the permit.

(b) If, before obtaining an outdoor advertising device permit and a vegetation control permit, vegetation located on state highway right-of-way is removed, cut, or trimmed, and application is subsequently made for an outdoor advertising permit, then the Commissioner may deny the permit.

(c) If, before applying for a vegetation control permit, vegetation located on state highway right-of-way is removed, cut, or trimmed in the vicinity of an outdoor advertising device, which action was reasonably calculated to afford greater visibility of the outdoor advertising device, then the Commissioner may revoke the outdoor advertising device permit or permits for the affected outdoor advertising devices.

(d) Prior to invoking this section, the Commissioner or the Commissioner's designee shall advise the affected outdoor advertising device permit applicant or holder, whichever is appropriate, that a preliminary determination of illegality has been made. The party so advised must be given the opportunity to request a hearing to be conducted pursuant to contested case provisions of the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, before the Commissioner may make a final determination of illegality.

Authority: T.C.A. §§ 54-21-~~23~~111, 54-21-116, and ~~U.S.C. §131~~54-21-117. Administrative History: Original rule certified June 10, 1974. Repeal and new rule filed June 9, 1977; effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989.

1680-02~~2~~6-03-.09 –APPENDIX.

(1) Agreements between the Tennessee Department of Transportation and the United States Department of Transportation, Federal Highway Administration.

(a) Original Agreement (November 11, 1971)

A G R E E M E N T

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM.

* * *

THIS AGREEMENT made and entered into this 11th day of November, 1971, by and between the United States of America represented by the Secretary of Transportation, acting by and through the FEDERAL HIGHWAY ADMINISTRATOR, hereinafter referred to as the "ADMINISTRATOR", and the State of Tennessee, represented by the DEPARTMENT OF HIGHWAYS acting by and through its Commissioner, hereinafter referred to as the "STATE".

W I T N E S S E T H:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid Primary Systems should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(d) of Title 23, United States Code, authorizes the Secretary of Transportation to enter into agreements with the several States to determine the size, lighting and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or com-

mercial under authority of State law or in unzoned commercial or industrial areas, as may be determined by agreements between the several States and the Secretary of Transportation; and

WHEREAS, the purpose of said agreements is to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect the public investment in the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the STATE OF TENNESSEE desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and said National policy.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. Definitions

A. The term "ACT" means Section 131 of Title 23, United States Code (1965) commonly referred to as Title I of the Highway Beautification Act of 1965.

B. Commercial or industrial activities for purposes of unzoned industrial and commercial areas mean those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.
3. Transient or temporary activities.
4. Activities not visible from the main traveled way.
5. Activities more than 660 feet from the nearest edge of the right-of-way.
6. Activities conducted in a building principally used as a residence.
7. Railroad tracks and minor sidings.

C. Zoned commercial or industrial areas mean those areas which are reserved for business, commerce, or trade pursuant to State or local zoning regulations.

D. Unzoned commercial or industrial areas mean those areas on which there is located one or more permanent structures devoted to a commercial or an industrial activity or on which a commercial or an industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 600 feet from and beyond the edge of such activity in each direction and a corresponding zone directly across a primary highway which is not also a limited access highway when the same is not a public park, public playground, public recreational area, public forest, wildlife, or waterfowl refuge, historic

site, scenic area, cemetery, or primarily residential in character. The unzoned areas shall not include land across the highway from a commercial or an industrial activity when said highway is an Interstate or a controlled access primary highway.

All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage, processing or landscaped areas of the commercial or industrial activity, not from the property lines of the activity, and shall be along or parallel to the edge of the pavement of the highway.

E. Interstate System means that portion of the National System of Interstate and Defense Highways located within this STATE, as officially designated, or as may hereafter be so designated, by the Commissioner of Highways, and approved by the Secretary of Transportation, pursuant to the provisions of Title 23, United States Code.

F. Primary System means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the Commissioner of Highways, and approved by the Secretary of Transportation, pursuant to the provisions of Title 23, United States Code.

G. Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

H. Main-traveled way means the traveled way of a highway on which through traffic is carried.

In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

I. Outdoor advertising or sign means any outdoor sign, display, device, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard or other thing which is used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of any portion of any Interstate or primary highway.

J. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

II. Scope of Agreement

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 the Interstate and Federal-aid Primary Systems,in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of either or both of said systems.

III. State Control

The STATE hereby agrees that, in all areas within the scope of this Agreement, the STATE shall effectively control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this Agreement, other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon, in accordance with the following:

A. In zoned commercial and industrial areas, the STATE may notify the Secretary as notice of effective control that there has been established within such areas comprehensive zoning which regulates the size, lighting, and spacing of outdoor advertising signs consistent with the intent of the Act and with customary use.

B. In all other zoned and unzoned commercial and industrial areas, within the scope of this Agreement, the criteria set forth below shall apply.

Size of Signs

1. The maximum area for any one sign shall be 1200 square feet, however, with a maximum height of 30 feet or maximum length of 60 feet, inclusive of any border and trim but excluding ornamental base or apron supports and other structural members; provided further, however, that in counties having a population greater than 250,000, the STATE may establish standards for maximum size greater than 1200 square feet in area, provided that any such standards shall be in accord with customary use of off-premise outdoor advertising within the area in which

said standards will apply. In no instance, however, shall these standards exceed 3000 square feet, inclusive of any border and trim, and exclusive of ornamental base or apron supports and other standard members.

2. The area shall be measured by the smallest square rectangle, triangle, circle or combination thereof which will encompass the entire sign.

3. A sign structure may contain one or two signs per facing and may be placed doubled-faced, back to back or V-type, but the total area of any facing may not exceed 1200 square feet.

Spacing of Signs

1. Interstate Highways and Controlled Access Highways on the Federal-aid Primary System
(a) No two structures shall be spaced less than 500 feet apart on the same side of the highway, provided, however, that such signs may be located within 500 feet of another sign when the signs are separated by buildings or other obstructions so that only one sign located adjacent to or within the 500 feet zone is visible from the highway at any one time.
(b) Outside incorporated municipalities no structure may be located adjacent to, or within 500 feet of an interchange, or intersection at grade, measured along the Interstate or controlled access highways on the primary system from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

2. Non-Controlled Access Primary Highways
(a) Outside of the corporate limits of a municipality no two structures shall be spaced less than 300 feet apart on the same side of the highway.
(b) Within the corporate limits of a municipality no two structures shall be spaced less than 100 feet apart on the same side of the highway.
(c) Provided, however, with respect to a and b above, that structures may be spaced closer to others when they are separated by buildings or other obstructions so that only one is visible within the otherwise applicable spacing requirement at any one time.

3. Explanatory Notes
(a) Official and "on premise" signs, as defined in Section 131(c) of Title 23, United States Code, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.
(b) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

Lighting of Signs

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or Federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

C. The STATE and local governments shall have full authority under any present or future zoning laws to zone areas for commercial or industrial purposes and the action of the STATE and local governments in this regard will be accepted for the purposes of this Agreement. At any time that a local government adopts comprehensive zoning which includes the regulation of outdoor advertising, the STATE may so

certify to the ADMINISTRATOR and control of outdoor advertising in commercial or industrial zones will transfer as provided in subsection A of this section.

IV. Interpretation

The provisions contained herein shall constitute the minimum acceptable standards for effective control of signs, displays, and devices within the scope of this Agreement.

Nothing contained herein shall be construed to abrogate or prohibit the STATE or any local government from exercising a greater degree of control of outdoor advertising than that required or contemplated by the Act or from adopting standards which are more restrictive in controlling outdoor advertising than the provisions of this Agreement.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress, the parties reserve the right to re-negotiate this Agreement or to modify it to conform with any amendment.

V. Effective Date

This Agreement shall become effective upon the passage of an Act by the General Assembly authorizing the same.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officials on the day and date first above written.

STATE OF TENNESSEE
DEPARTMENT OF HIGHWAYS

By: _____
COMMISSIONER

UNITED STATES OF AMERICA

By: _____
FEDERAL HIGHWAY ADMINISTRATOR

(b) Supplemental Agreement (October 16, 1984)

SUPPLEMENTAL AGREEMENT

RELATIVE TO

AGREEMENT FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM.

This agreement made and entered into this 16 day of OCT, 1984 by and between the United States of America, represented by the Secretary of Transportation, acting by and through the Federal Highway Administrator, hereinafter referred to as the "Administrator" and the State of Tennessee, represented by the Department of Transportation, acting by and through its Commissioner, hereinafter referrred to as the "State".

WITNESSETH:

WHEREAS, on or about November 11, 1971 the parties hereto entered into agreement, hereinafter referred to as the "Original Agreement", to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect the public investment in the Interstate and Federal-aid Primary Systems, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the General Assembly of the State of Tennessee authorized the Commissioner of Transportation to enter into the Original Agreement; and

WHEREAS, the General Assembly provided that any modification of the Original Agreement should become effective only upon passage of an Act authorizing same by the General Assembly; and

WHEREAS, the General Assembly has authorized certain amendments to the Original Agreement, said amendments being set forth in Chapter 133, Section 4 of the Public Acts of 1983; and

WHEREAS, the General Assembly authorized the Commissioner of Transportation to execute a modification of the Original Agreement to reflect said amendments.

NOW, THEREFORE, the parties hereto agree that the Original Agreement shall be amended as follows:

SECTION 1. Provision I. (Definitions) Part D. (Unzoned Commercial or Industrial Areas) of the Original Agreement is amended by deleting the following language and punctuation:

> "Unzoned commercial or industrial areas means those areas on which there is located one or more permanent structures devoted to a commercial or an industrial activity or on which a commercial or an industrial activity is actually conducted, whether or not a permanent structure is located thereon,"

and by substituting instead the following language and punctuation:

> "Unzoned commercial or industrial areas means those areas on which there are located one or more permanent structures within which a commercial or an industrial business is actively conducted, and which are equipped with all customary utilities facilities and open to the public regularly or regularly used by employees of the business as their principal work station, or which, due to the nature of the business, are equipped, staffed and accessible to the public as is customary,".

SECTION 2. Provision III. (State Control) Part B. (Size of Signs), 1. of the Original Agreement is amended by deleting the provision in its entirety and by substituting instead the following:

> "The maximum area for any one sign shall be seven hundred seventy-five square feet, including any border and trim but excluding ornamental base or apron supports and other structural members; provided further however that in counties having a population greater than two hundred fifty thousand, the maximum size of any one sign shall be twelve hundred square feet including any border and trim, but excluding ornamental base or apron supports and other structural members."

SECTION 3. Provision III. (State Control) Part B. (Size of Signs), 3. of of the Original Agreement is amended by deleting the language:

> "but the total area of any facing may not exceed 1200 square feet",

and by substituting instead the following:

> "but the total area of any facing may not exceed seven hundred seventy-five square feet, unless the sign structure is located in a county having a population greater than two hundred fifty thousand, in which case the total area of any facing may not exceed twelve hundred square feet inclusive of any border and trim, but excluding ornamental base or apron supports and other structural members.".

SECTION 4. Provision III. (State Control) Part B. (Spacing of Signs) 1.(a) of the Original Agreement is amended by deleting from lines 1, 2, 3, 4 and 6 the symbol and word "500 feet" and by substituting instead the symbol and word "1,000 feet".

SECTION 5. Provision III. (State Control) Part B. (Spacing of Signs) 1.(b) of the Original Agreement is amended by deleting from line 2 the symbol and word "500 feet" and substituting instead the symbol and word "1,000 feet".

SECTION 6. Provision III. (State Control) Part B. (Spacing of Signs) 2.(a) of the Original Agreement is amended by deleting from line 2 the symbol and word "300 feet" and by substituting instead the symbol and word "500 feet".

SECTION 7. All other provisions of the Original Agreement shall remain in full force and effect.

SECTION 8. This agreement shall become effective upon execution.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective duly authorized officials on the day and date first above written.

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

BY: _____
Robert E. Farris
Commissioner

UNITED STATES OF AMERICA

BY: _____
Federal Highway Administrator

(2) Brightness Standards for Changeable Message Signs with a Digital Display

T.C.A. § 54-21-119(h) establishes the brightness standards for changeable message signs with a digital display, as follows:

(a) All changeable message signs installed on or after July 1, 2014, must come equipped with a light-sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(b) The brightness of light emitted from a changeable message sign must not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200') for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250') for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350') for those sign faces greater than six hundred eighty square feet (680 sq. ft.), or subject to the measuring criteria in the applicable table set forth in subdivision (h)(4).

(c) Any measurements required pursuant to this subsection (h) must be taken from a point within the highway right-of-way at a safe distance from the edge of the traveled way, at a height above the roadway that approximates a motorist's line of sight, and as close to perpendicular to the face of the changeable message sign as practical. If perpendicular measurement is not practical, valid measurements may be taken at an angle up to forty-five (45) degrees from the center point of the sign face. If measurement shows a level above that prescribed in subdivision (h)(4), the exact calculations must be provided to the sign permit holder.

(d) In the event it is found not to be practical to measure a changeable message sign at the distances prescribed in subdivision (h)(2), a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth in this subdivision (h)(4). In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed foot candle level above ambient light must not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the tables in subdivisions (h)(4)(A), (B), (C), and (D), as applicable.

For any measuring distance between the alternative measuring distances set forth in the following tables, the prescribed foot candle level above ambient light must not exceed the interpolated level derived from the following formula:

[12 = (D2<2>/01<2>) x 11]

Where I1 = the prescribed foot candle level above ambient light for the measuring distance listed in the tables, I2 = the derived foot candle level above ambient light for the desired measuring distance, D1 = the desired measuring distance in feet, and D2 = the alternative measuring distance in feet listed in the tables, as follows:

1. For changeable message signs less than or equal to three hundred square feet (300 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	0.68
125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

3. For changeable message signs greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.2
125	0.77
150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

3. For changeable message signs greater than three hundred eighty-five square feet (385 sq. ft.) but less than or equal to six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

4. For changeable message signs greater than six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	3.675
125	2.35
150	1.63
200	0.92
250	0.59
275	0.49

300	0.41
325	0.35
350	0.3
400	0.23
425	0.2
450	0.18
500	0.15

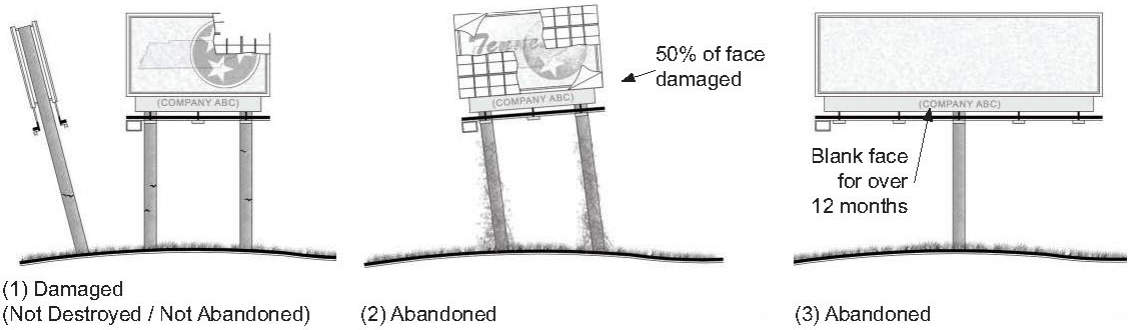
(e) The brightness standards established in T.C.A. § 54-21-119(h) apply to all changeable message signs located in this state operated pursuant to a permit issued by the Commissioner.

(3) Illustrations

(a) Abandoned Devices

CONTROL OF OUTDOOR ADVERTISING

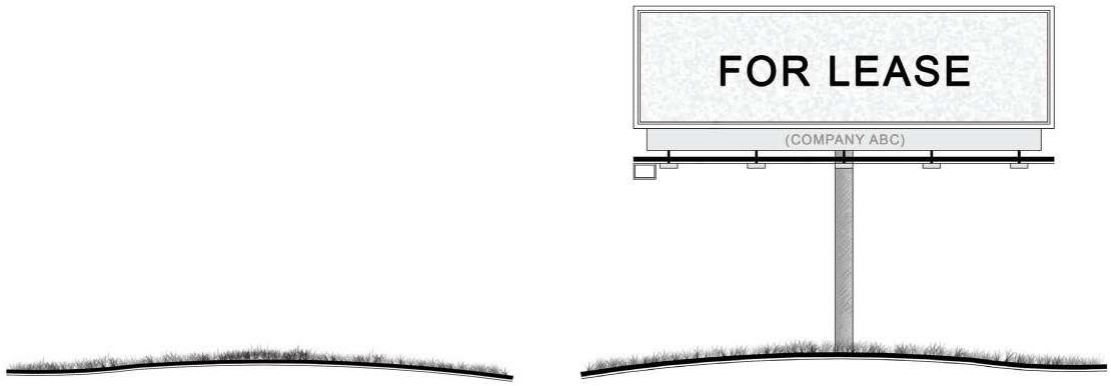
ABANDONED DEVICES



(1) Damaged
(Not Destroyed / Not Abandoned)

(2) Abandoned

(3) Abandoned



(4) Abandoned
(No structure)

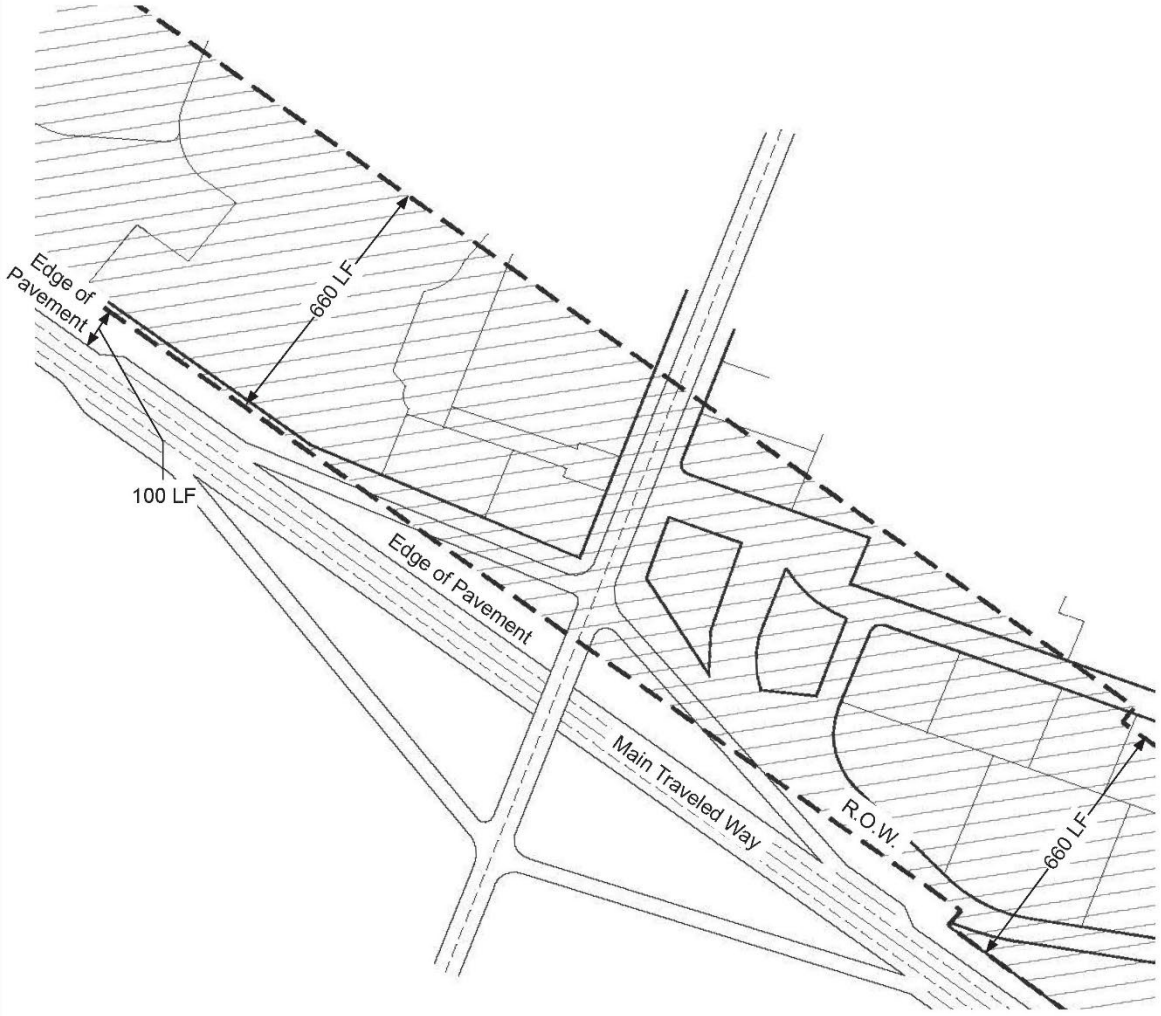
(5) Not Abandoned

"Abandoned Outdoor Advertising Device" means any regulated outdoor advertising device which for a twelve (12) month period falls into one or more of the following classifications:
(1) A device in the case of a wooden sign structure means that sixty percent (60%) or more of the upright supports of the sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports.
(2) A device whose sign face is damaged fifty percent (50%) or more.
(3) A device that displays no message and blank display.
(4) A device that has been removed from its permitted locations for more than twelve (12) months.
(5) Not abandoned, device with display.

Not to Scale

(b) Measurement of Adjacent Area at Interchanges

MEASUREMENT OF THE ADJACENT AREA



(a) Measurement of the adjacent area.

1. In general, the measurement of the adjacent area shall begin at the nearest edge of the highway right-of-way property line and continue outward six hundred and sixty feet (660'); provided, however, that:

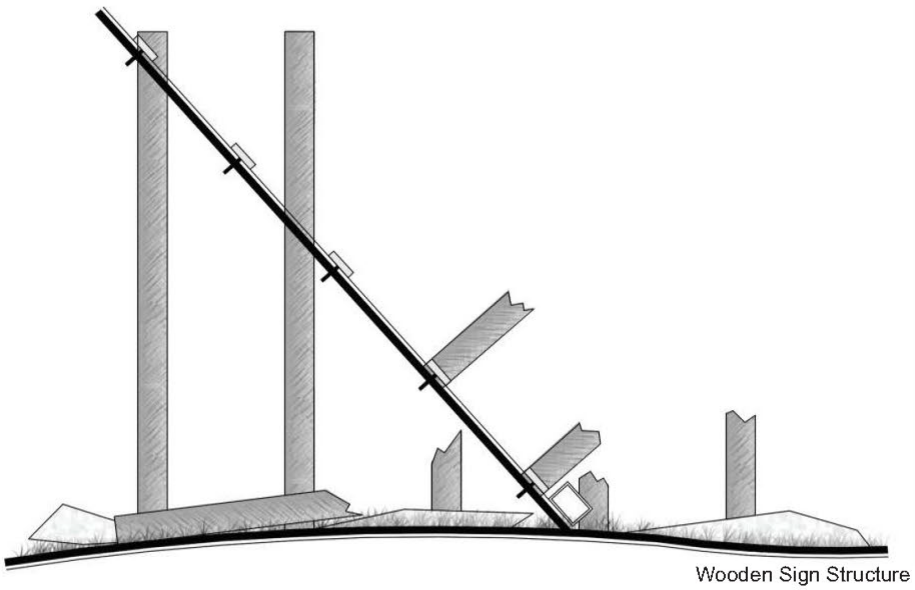
2. Where the highway right-of-way width extends outward more than one hundred feet (100') from the main traveled way of an interstate or other controlled access highway at an interchange with another highway that is not a controlled access highway, the measurement of the adjacent area beyond the interchange will begin at a line that is one hundred feet (100') outward from, and parallel to, the outside edge line of the through lanes on the main traveled way, excluding shoulders, exit ramps, entrance ramps, and acceleration or deceleration lanes.

Not to Scale

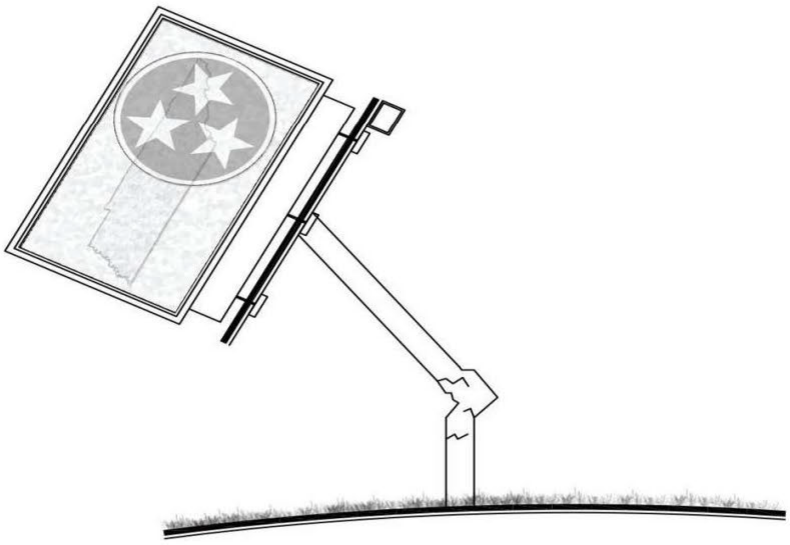
(c) Destroyed Non-Conforming Outdoor Advertising Device

CONTROL OF OUTDOOR ADVERTISING

DESTROYED NON-CONFORMING OUTDOOR ADVERTISING DEVICE



Wooden Sign Structure



Metal Sign Structure

Destroyed Non-Conforming Device

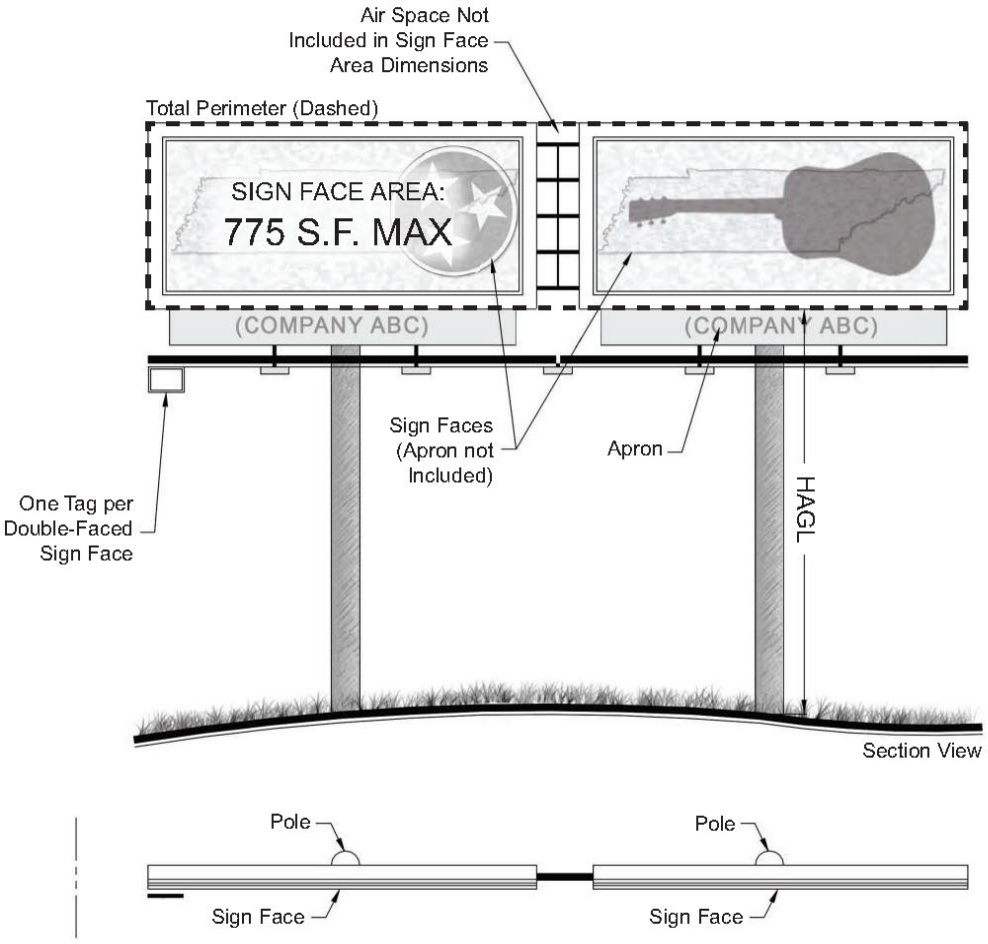
"Destroyed" means with respect to non-conforming outdoor advertising devices, that, in the case of wooden sign structures, sixty percent (60%) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above the ground of each, broken, bent, or twisted support.

Not to Scale

(d) Device Types: Double-Faced

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: DOUBLE-FACED



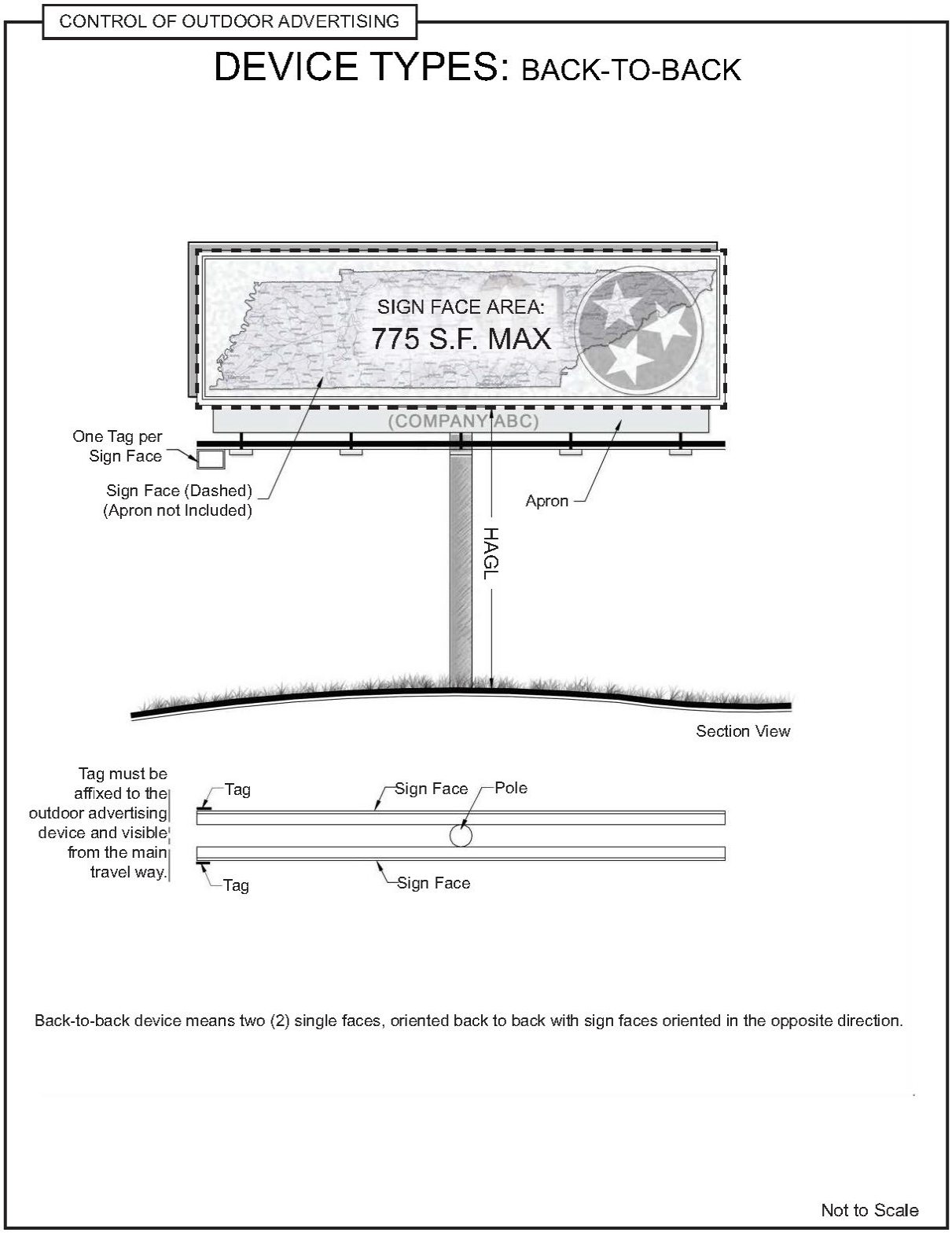
"Double-faced device" means a single faced sign with side by side sign faces oriented in the same direction.

This type of sign face only requires one (1) permit tag when both faces are connected with bracing.

Signs must be physically connected to form one (1) contiguous structure. The perimeter of the double-faced device,excluding airspace, is used to calculate the total sign face area that must not exceed 775 feet.

Not to Scale

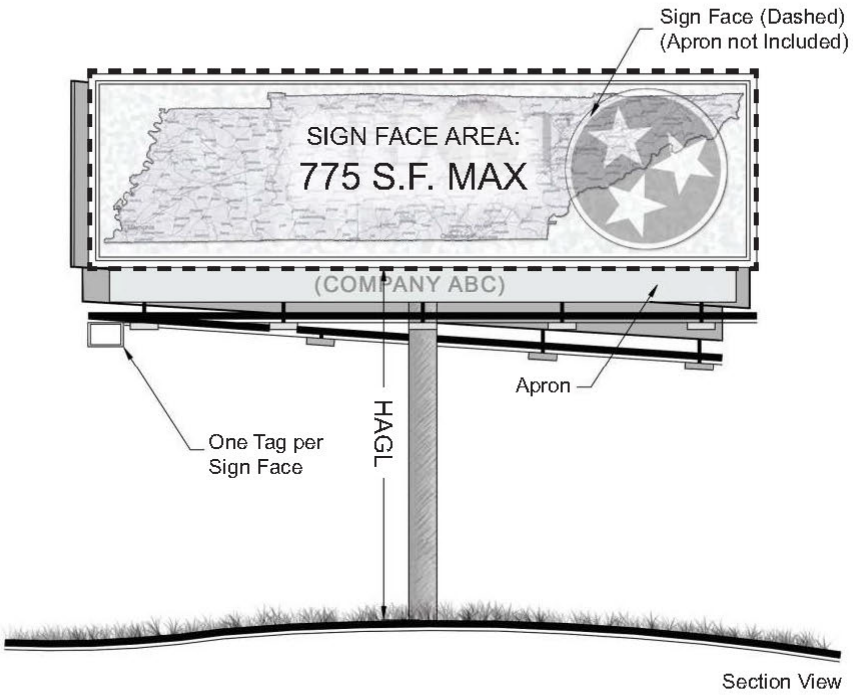
(e) Device Types: Back-To-Back

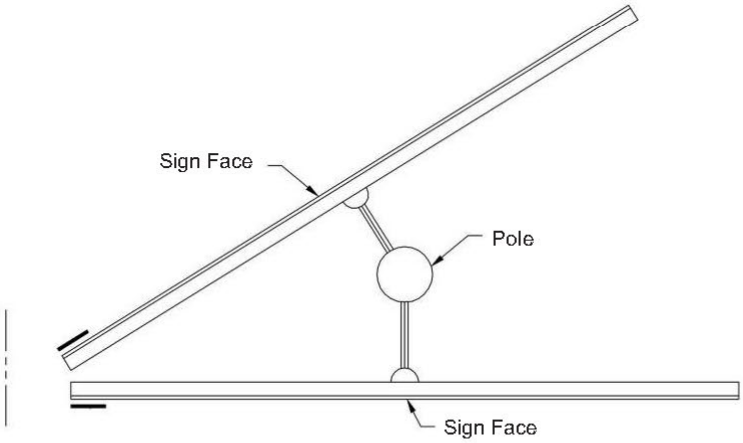


(f) Device Types: V-Type

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: V-TYPE





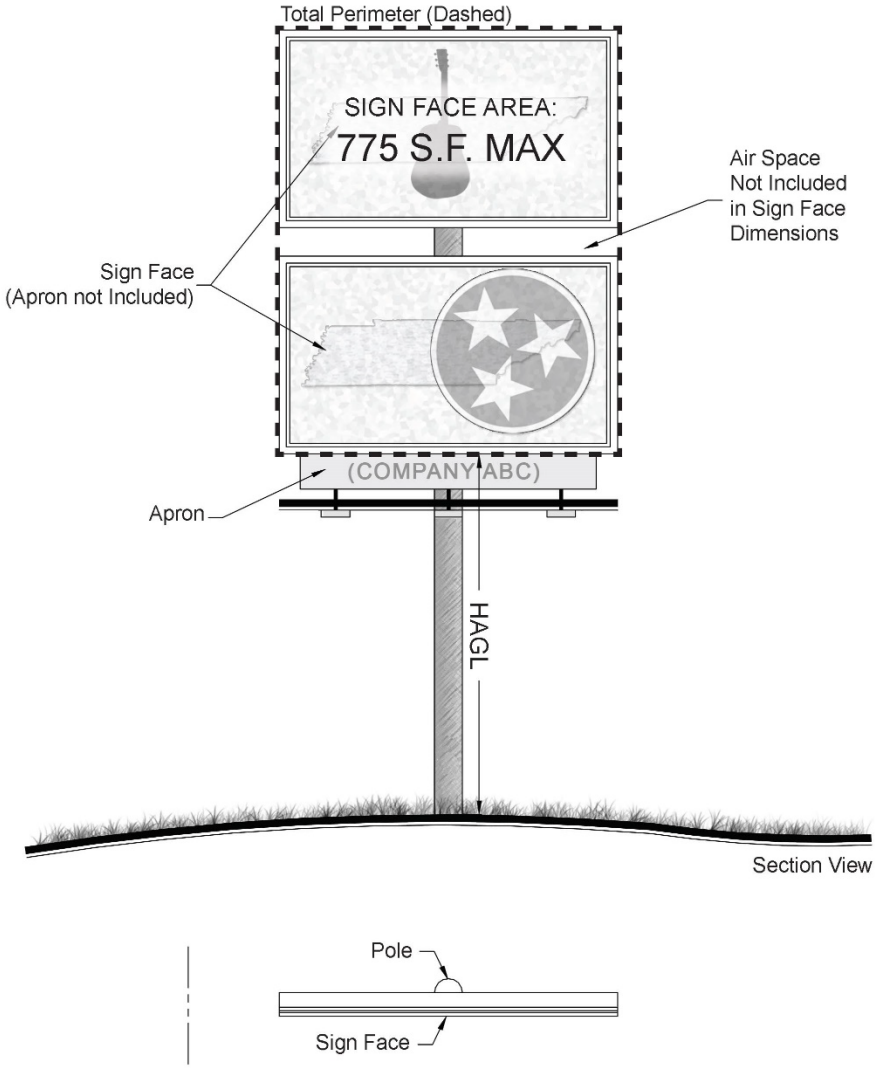
"V" type device means two (2) single faces, oriented back to back in a "V" shaped configuration with sign faces oriented in the opposite direction.

Not to Scale

(g) Device Types: Stacked Display

CONTROL OF OUTDOOR ADVERTISING

DEVICE TYPES: STACKED DISPLAY



After July 2001, permits are no longer issued for stacked sign faces in which two (2) or more displays are stacked one (1) above the other including airspace. Stacked sign faces erected prior to July 1, 2001 are unaffected. Permit holders may move the stacked sign face to a new eligible conforming permit location. TCA § 54-21-118.

"Stacked device" means an outdoor advertising device in which two (2) or more displays facing in the same direction of travel along the highway are stacked one (1) above the other in multiple sign faces separated by airspace and regulated together under one permit, as provided in T.C.A. § 54-21-118.

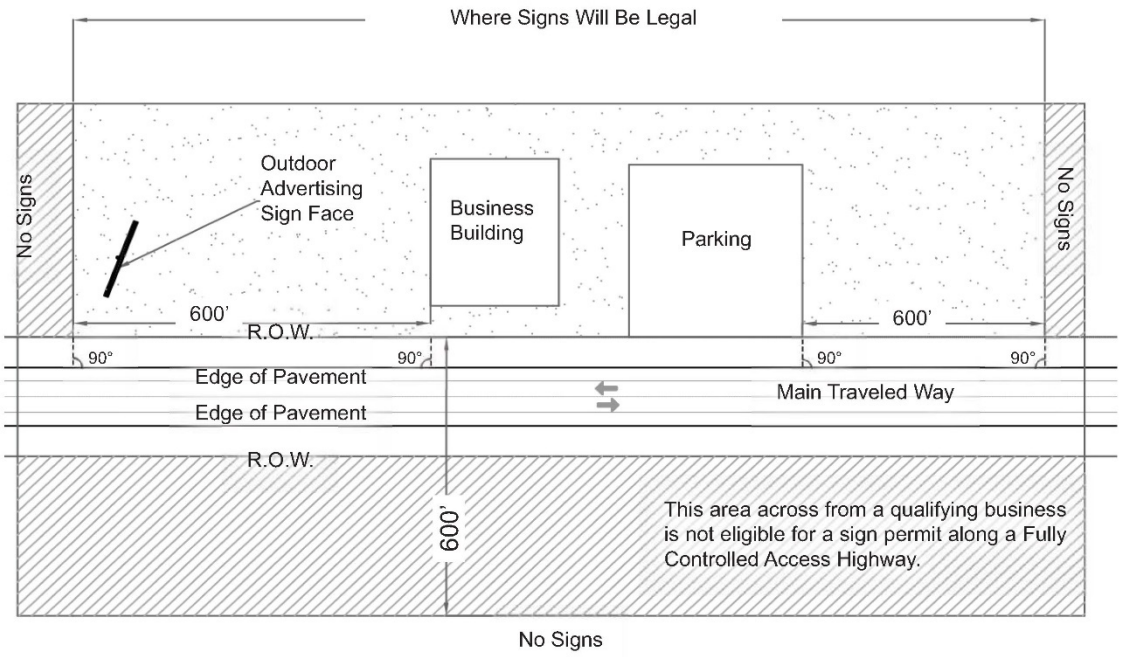
Total perimeter used to calculate total sign face area.

Not to Scale

(h) Unzoned Commercial or Industrial

CONTROL OF OUTDOOR ADVERTISING

UNZONED COMMERCIAL OR INDUSTRIAL



The 600 feet shall be measured along the edge of the pavement of the traveled way nearest the commercial activity from points that are perpendicular to the edge of pavement.

Legend

No Signs Allowed

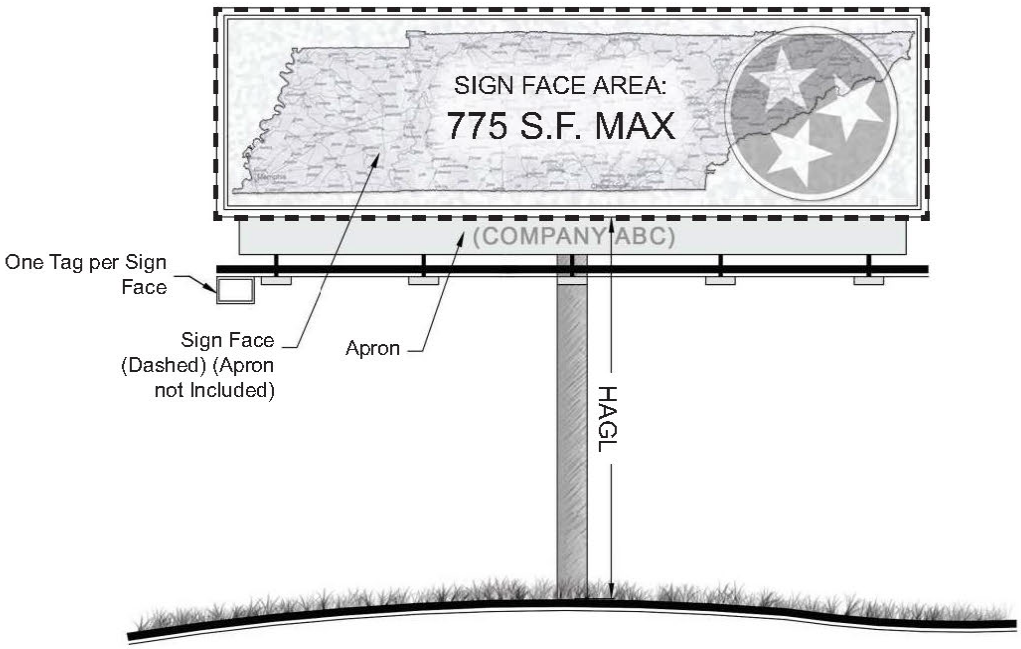
Signs Eligible for Permitting

Not to Scale

(i) Sign Face Size & Parts

CONTROL OF OUTDOOR ADVERTISING

SIGN FACE SIZE & PARTS



The maximum total gross area for a sign face shall be 775 square feet, with a maximum length of 60 feet or a maximum height of 30 feet (A sign face 30'x60' is not allowed).

In counties having a population greater than 250,000 the State Department will accept the particular county's standard size, but in no instance shall this standard size, determined by the local governing body, exceed 1,200 square feet, inclusive of any border and trim and advertising embellishments but exclusive of ornamental base or apron supports and other standard members.

"Sign face" means the entire surface of a sign used for the display of advertising. This includes the area normally intended for O.D.A messages. The area of a sign face is taken as the smallest measurement of a square, rectangle, or circle, within which such advertising or informative content is actually displayed. Apron not included.

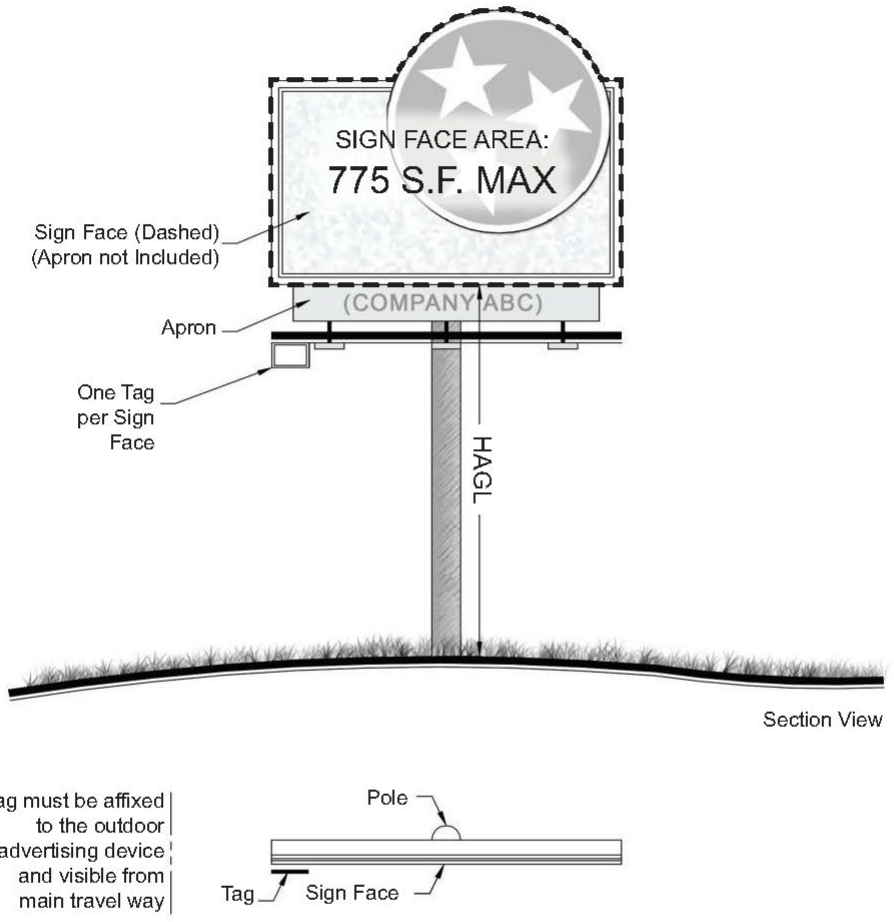
"Height above ground level" (HAGL) means the distance from the ground to the bottom of the sign face.

Not to Scale

(j) Sign Face Size

CONTROL OF OUTDOOR ADVERTISING

SIGN FACE SIZE



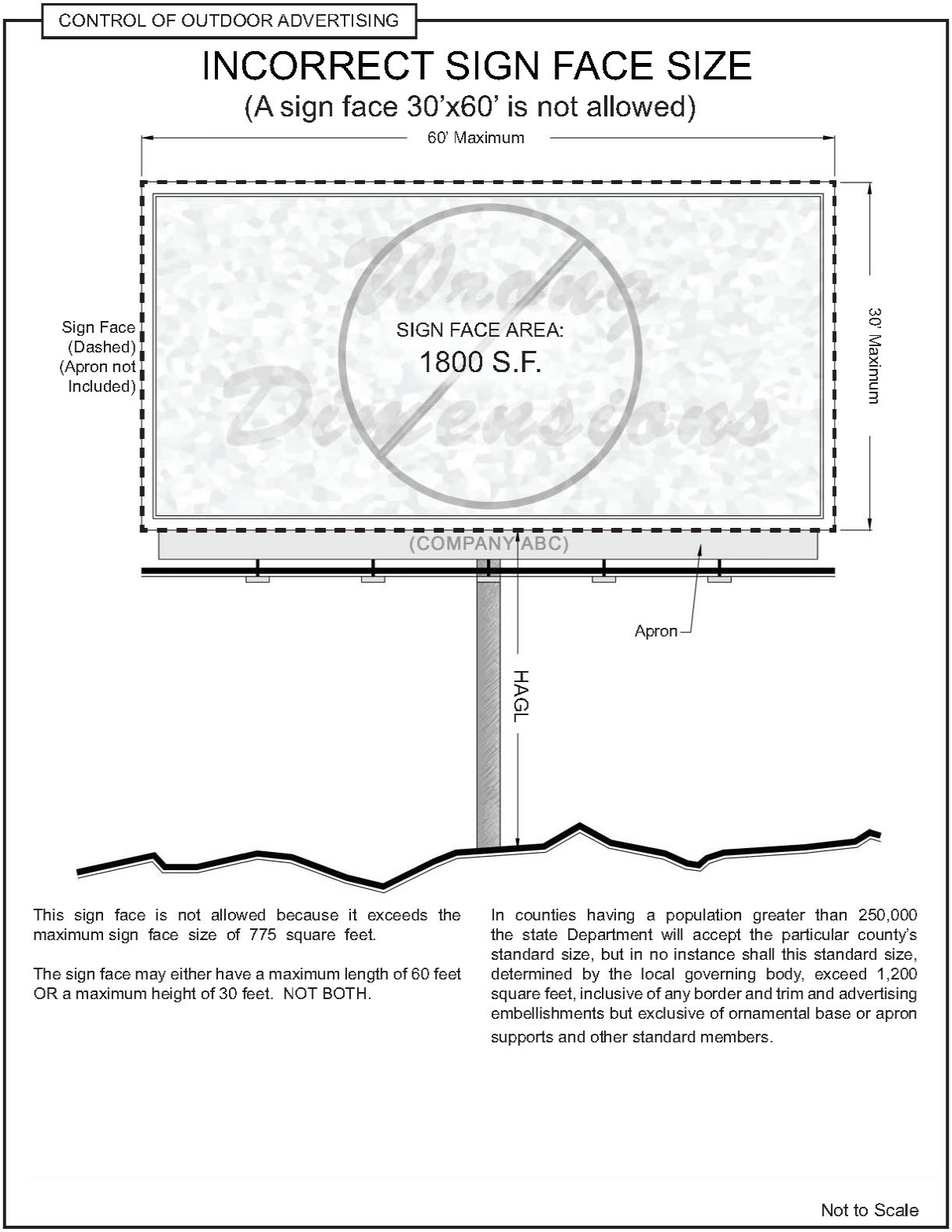
The maximum total gross area for a sign face shall be 775 square feet, with a maximum length of 60 feet or a maximum height of 30 feet (A sign face 30'x60' is not allowed).

"Height above ground level" (HAGL) means the distance from the ground to the bottom of the sign face.

"Sign face" means the entire area of a sign used for the display of outdoor advertising. This includes the area normally intended for the display of advertising messages, within and including the border and trim, taken as the smallest measurement of a square, rectangle, triangle, or circle, or combination thereof, and it also includes any additional area or areas extending outside the normal sign face within which any advertising embellishment or informative content is actually displayed.

Not to Scale

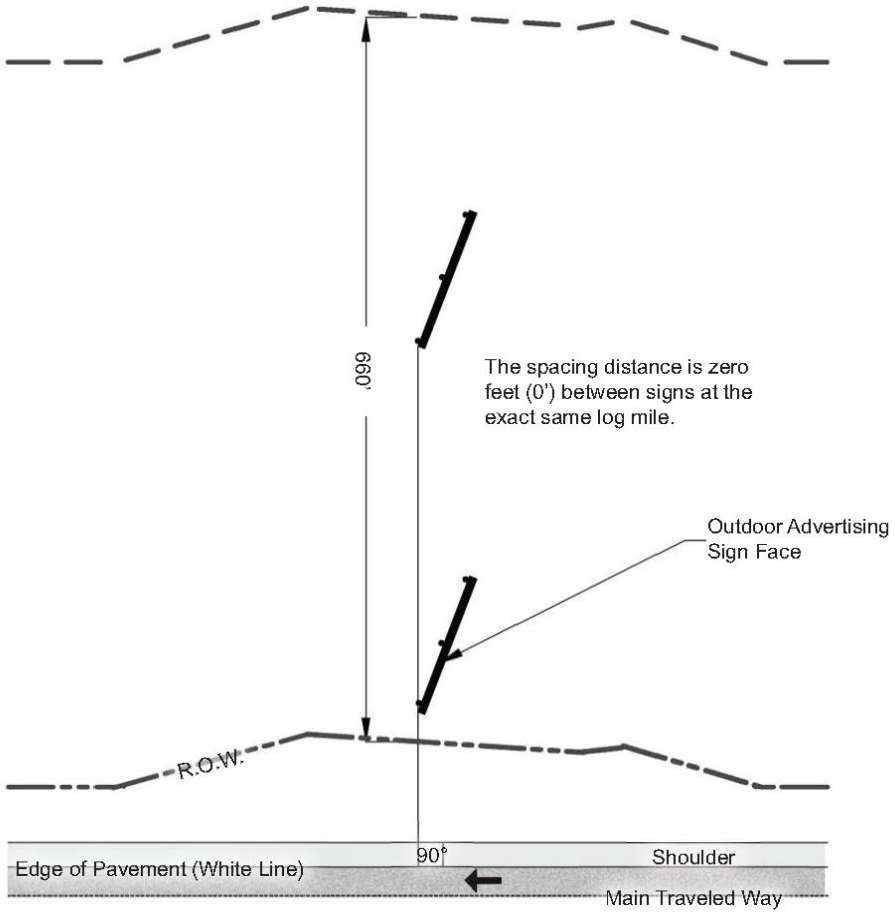
(k) Incorrect Sign Face Size



(l) Sign Spacing: Measurement Methods

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT METHODS



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between log mile points directly perpendicular to each.

All outdoor advertising devices located within 660 feet of the nearest edge of the right-of-way require a permit.

REGULATORY SPACING:

•Fully access controlled highways:
No two (2) devices shall be spaced less than 1,000 feet apart on the same side of highway.

•Not fully access controlled highways:
Outside the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

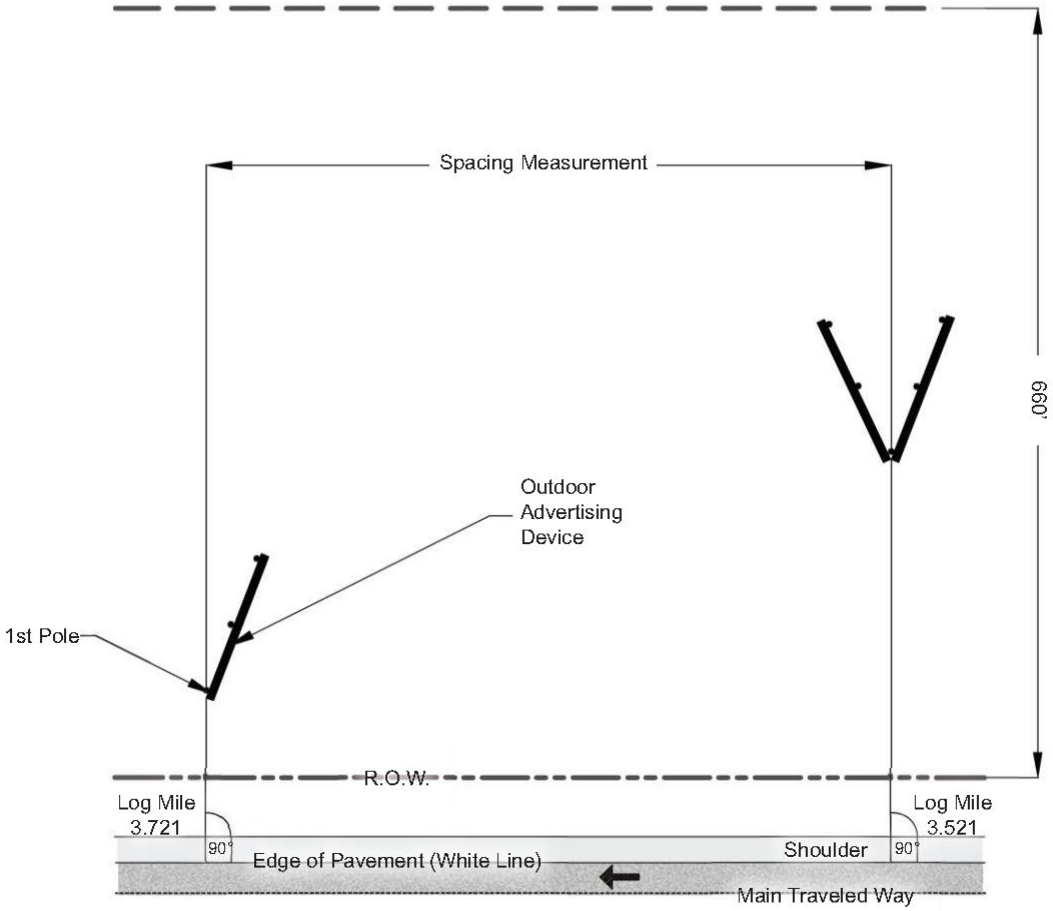
Within the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 100 feet apart on the same side of highway.

Not to Scale

(m) Sign Spacing: Measurement Methods

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT METHODS



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between log mile points directly perpendicular to each.

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Within the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 100 feet apart on the same side of highway.

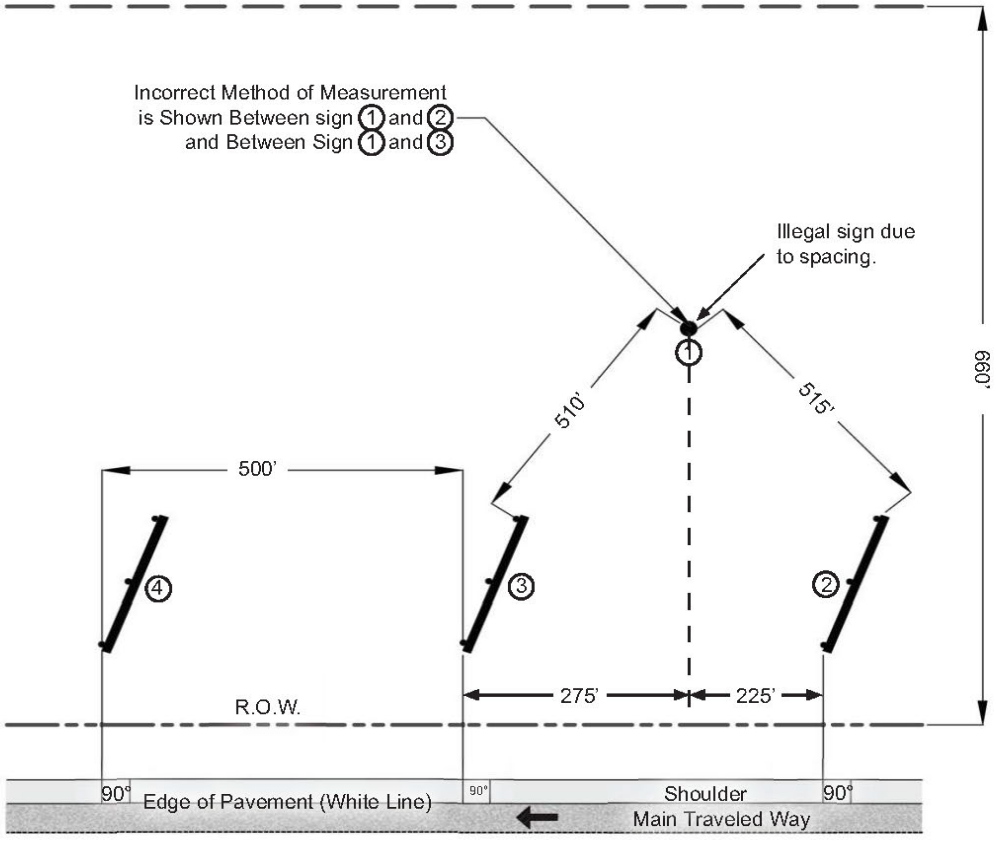
Not to Scale

(n) Sign Spacing: Measurement Methods

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT METHODS

Correct method of measurement is shown between sign ② and ③ and between sign ③ and ④



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between points directly perpendicular to each.

All outdoor advertising devices located within 660 feet of the nearest edge of the right-of-way require a permit.

REGULATORY SPACING:

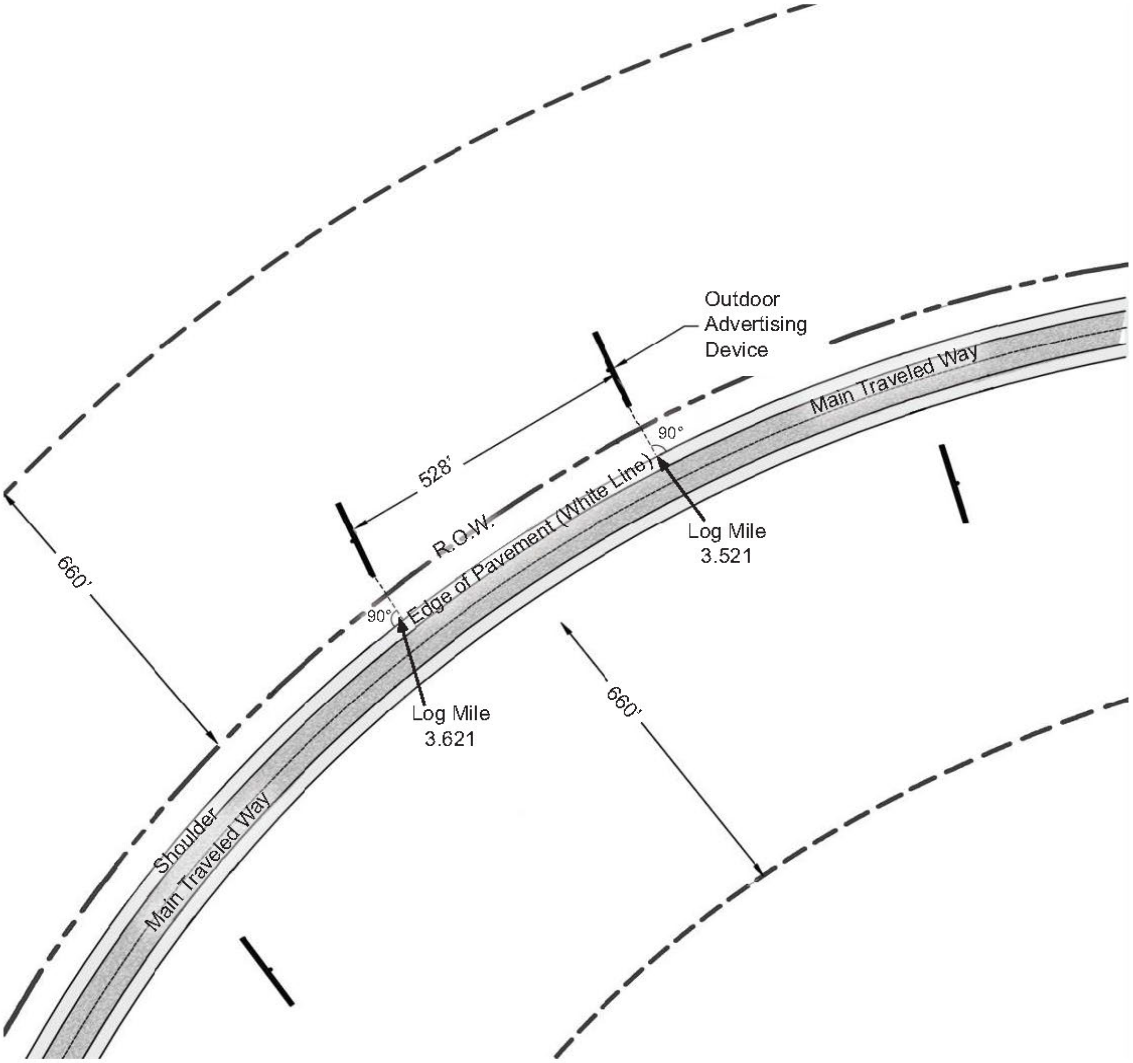
•Outside the corporate limits of an incorporated municipality: No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

Not to Scale

(o) Sign Spacing: Measurement Along A Curve

CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: MEASUREMENT ALONG A CURVE



Spacing is measured as follows:
The minimum distance between signs shall be measured in the direction of travel along the nearest edge of the pavement using a 90° (right) angle from the edge of pavement (white line) to the first pole nearest to the edge of pavement or the mono-pole between log mile points directly perpendicular to each.

All outdoor advertising devices located within 660 feet of the nearest edge of the right-of-way require a permit.

REGULATORY SPACING:

•Fully access controlled highways:
No two (2) devices shall be spaced less than 1,000 feet apart on the same side of highway.

•Not fully access controlled highways:
Outside the corporate limits of an incorporated municipality:
No two (2) devices shall be spaced less than 500 feet apart on the same side of highway.

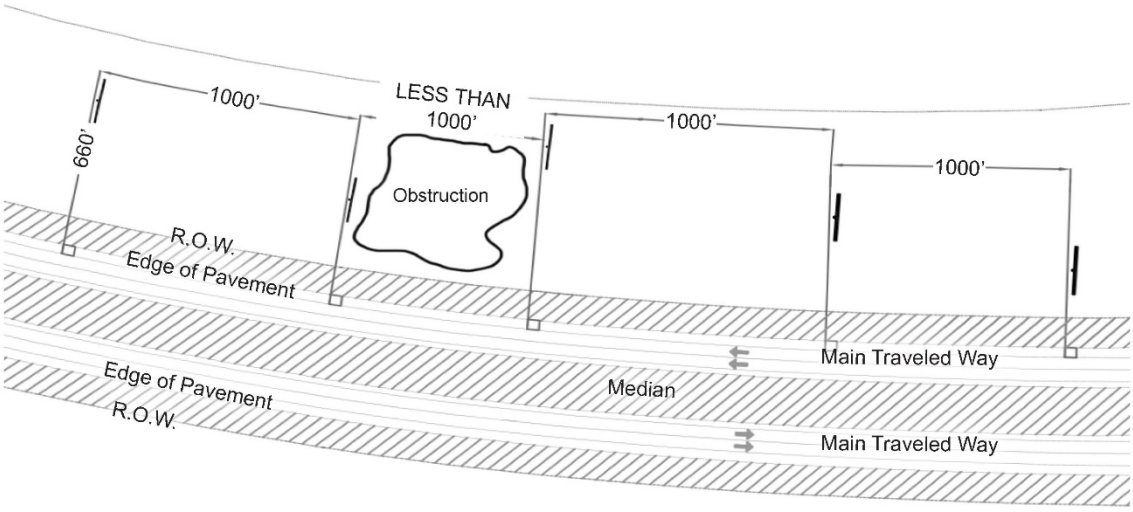
Within the corporate limits of an incorporated municipality:
No two (2) devices shall be spaced less than 100 feet apart on the same side of highway.

Not to Scale

(p) Spacing Exception

CONTROL OF OUTDOOR ADVERTISING

SPACING EXCEPTION



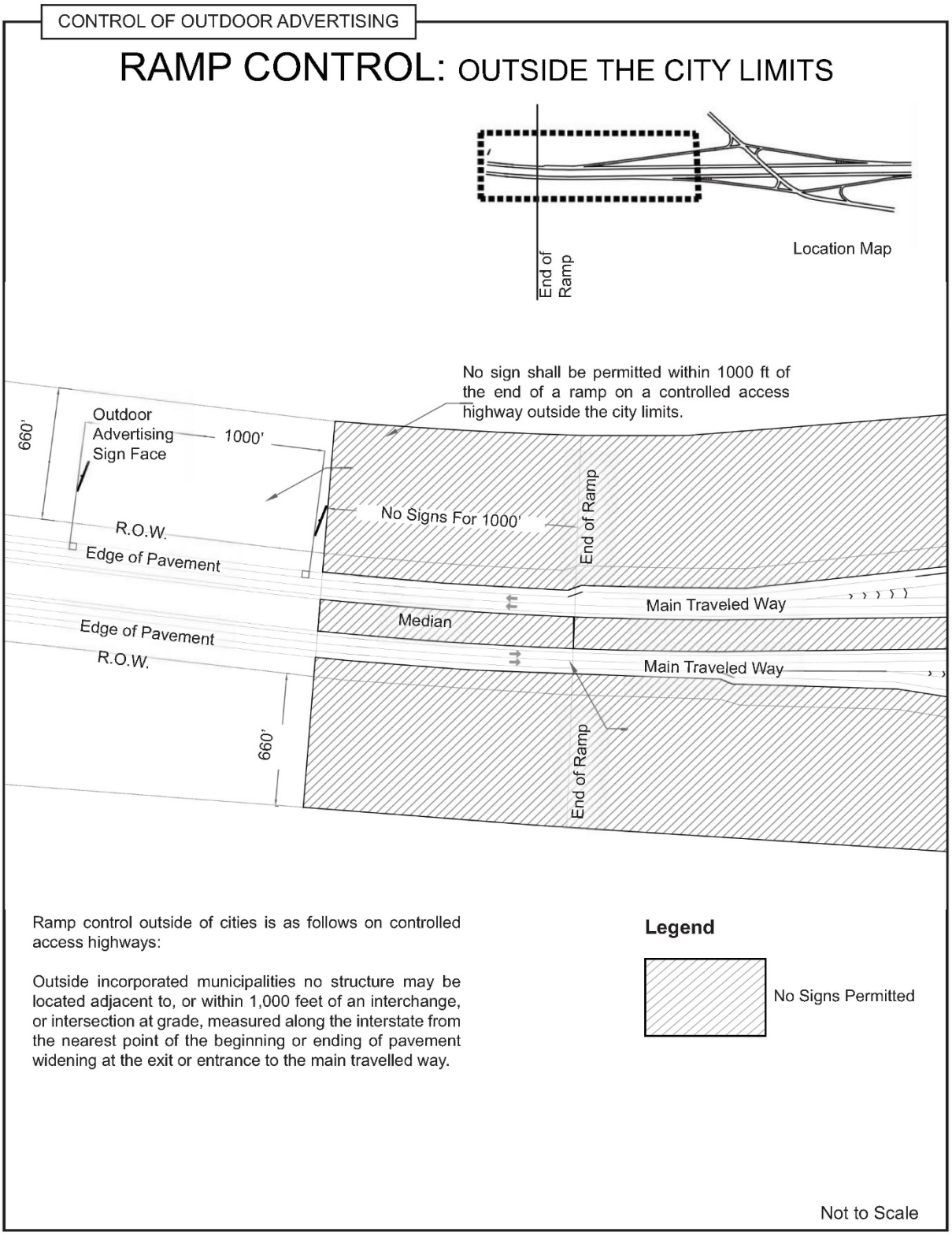
With respect to the one thousand (1,000) foot spacing rule in Rule 1680-06-03-.03(1)(f)1.(i), devices may be spaced closer together when they are seperated by buildings or other obstructions, not including any other outdoor advertising device, so that only one is visible from the main traveled way within the otherwise applicable spacing requirement at any one time.

Legend

No Signs Permitted

Not to Scale

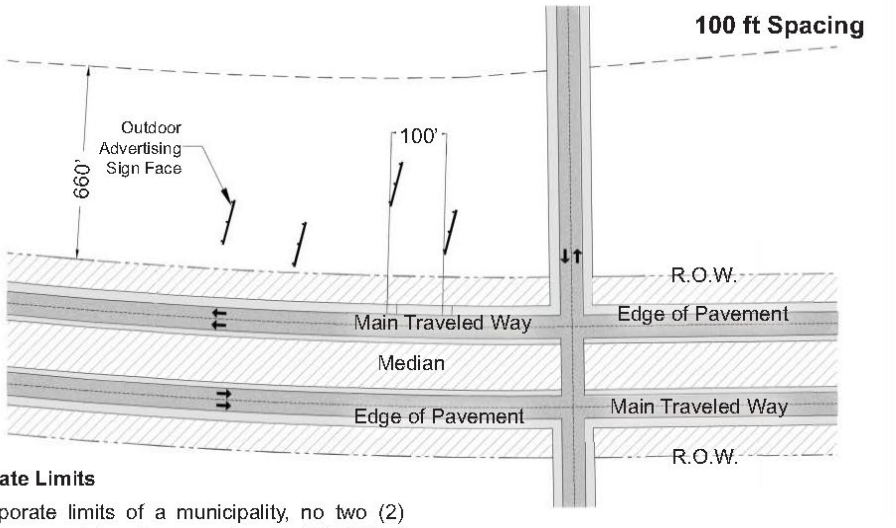
(q) Ramp Control: Outside the City Limits



(r) Sign Spacing: Not Fully Controlled Access Control

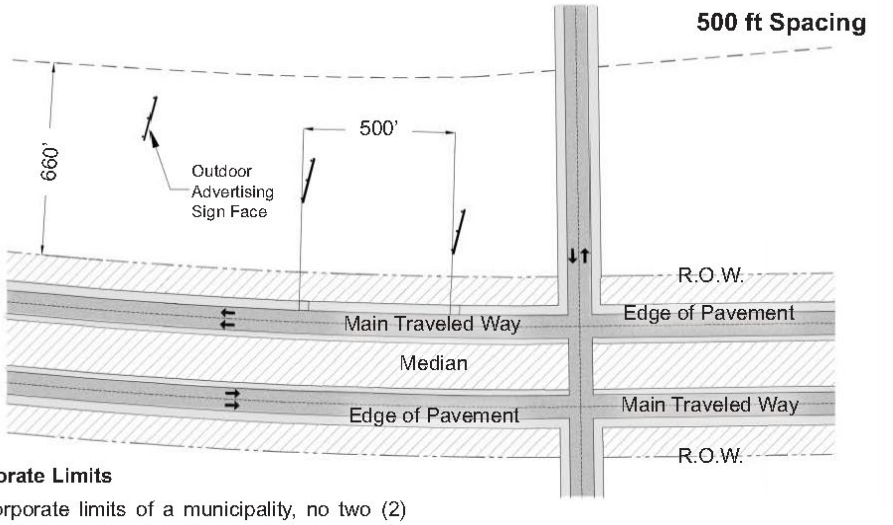
CONTROL OF OUTDOOR ADVERTISING

SIGN SPACING: NOT FULLY ACCESS CONTROL



Within Corporate Limits

Within the corporate limits of a municipality, no two (2) devices shall be spaced less than one hundred (100) feet apart on the same side of the highway.



Outside Corporate Limits

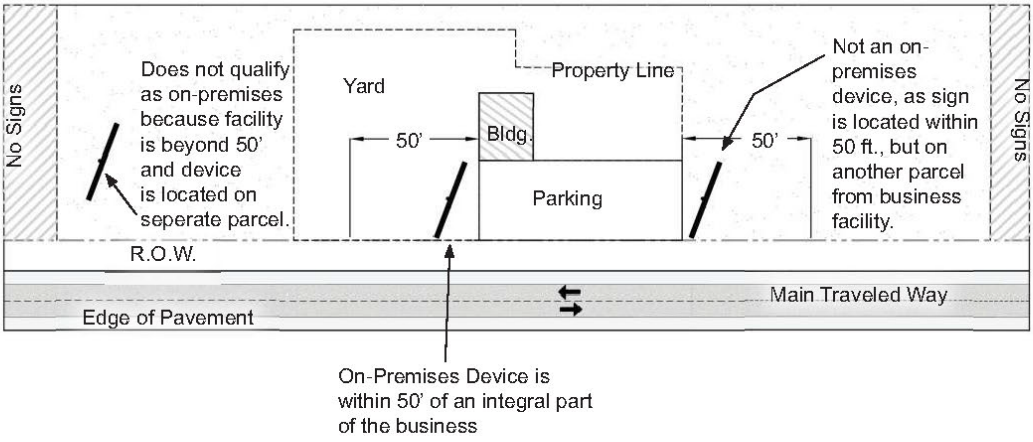
Outside the corporate limits of a municipality, no two (2) devices shall be spaced less than five hundred (500) feet apart on the same side of the highway.

Not to Scale

(s) On-Premises Device

CONTROL OF OUTDOOR ADVERTISING

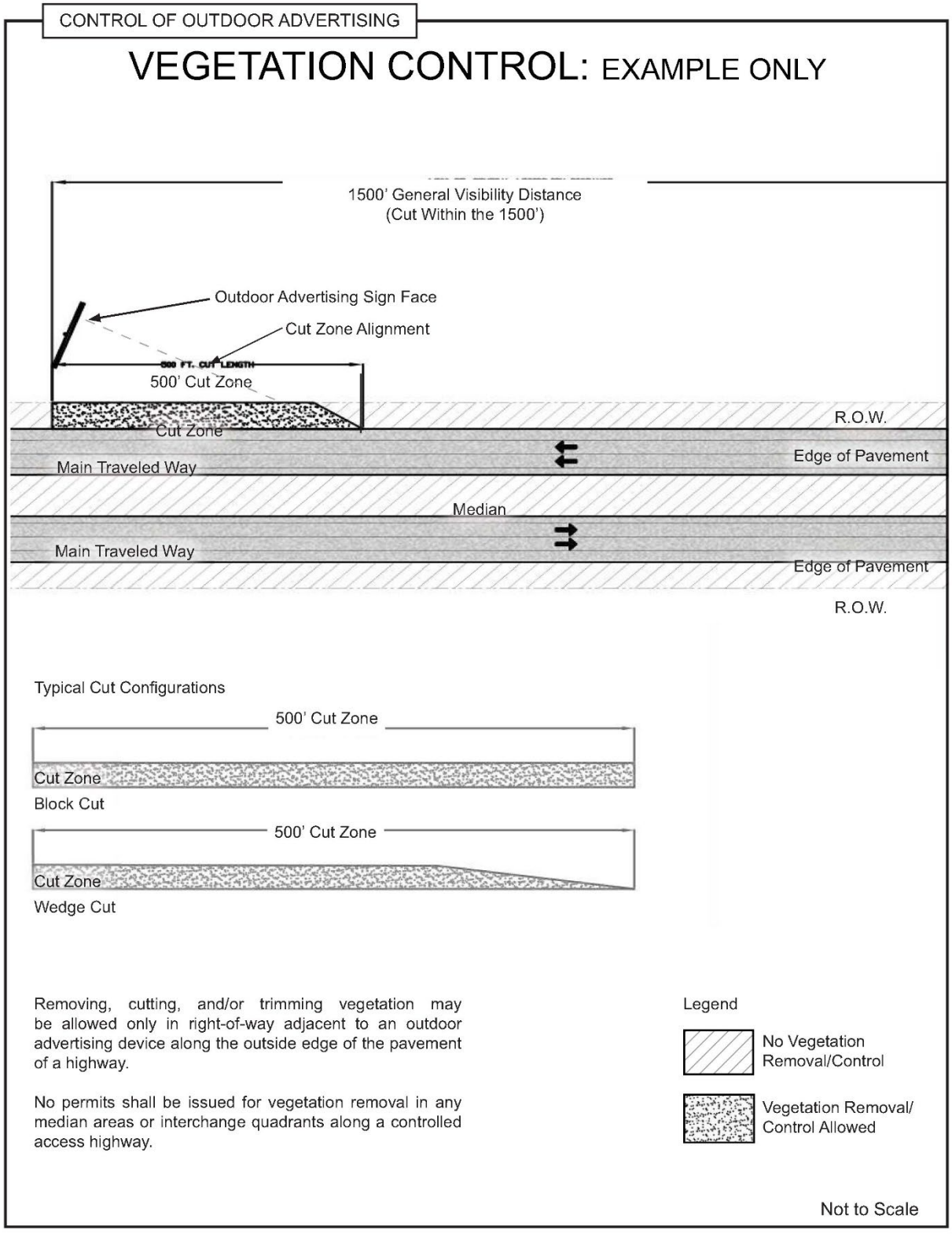
ON-PREMISES DEVICE



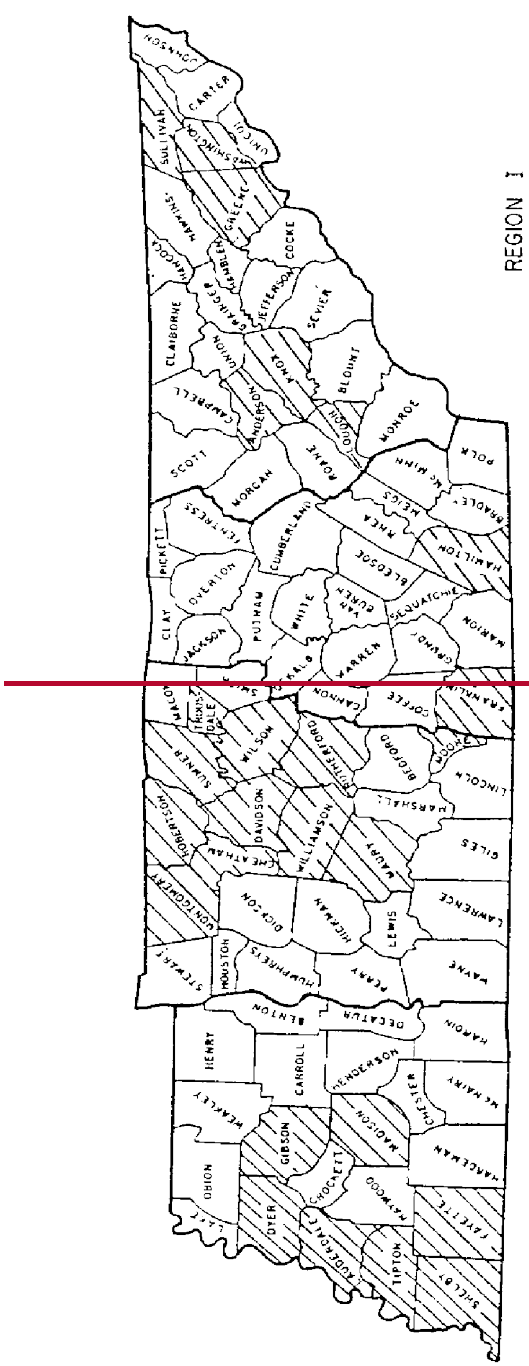
"On-Premises Device" means a sign: that is located within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as the facility that owns or operates the sign, or within fifty feet (50') of and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located.

Not to Scale

(t) Vegetation Control: Example Only



(u) Vegetation Control Removal Guide



REGIONS
OF THE
TENNESSEE DEPARTMENT OF TRANSPORTATION

REGION I

Anderson	Johnson		
Blount	Knox		
Campbell	Loudon		
Carter	Monroe		
Claiborne	Morgan		
Cocke	Roane		
Grainger	Scott		
Greene	Sevier		
Hamblen	Sullivan		
Hancock	Unicoi		
Hawkins	Union		
Jefferson	Washington		

REGION II

Bledsoe	McMinn		
Bradley	Marion		
Cannon	Meigs		
Clay	Overton		
Coffee	Pickett		
Cumberland	Polk		
DeKalb	Putnam		
Fentress	Rhea		
Franklin	Sequatchie		
Grundy	Van Buren		
Hamilton	Warren		
Jackson	White		

REGION III

Bedford	Maury	
Cheatham	Montgomery	
Davidson	Moore	
Dickson	Perry	
Giles	Robertson	
Hickman	Rutherford	
Houston	Smith	
Humphreys	Stewart	
Lawrence	Sumner	
Lewis	Trousdale	
Lincoln	Wayne	
Macon	Williamson	
Marshall	Wilson	

REGION IV

Benton	Henderson
Carroll	Henry
Chester	Lake
Crockett	Lauderdale
Decatur	McNairy
Dyer	Madison
Fayette	Obion
Gibson	Shelby
Hardeman	Tipton
Hardin	Weakley
Haywood	

COMPREHENSIVELY ZONED COUNTIES

(Rule 1680-02-03-.09, continued)

STATE OF TENNESSEE, DEPARTMENT OF TRANSPORTATION
OUTDOOR ADVERTISING DEVICE APPLICATION AND PERMIT

Name of Applicant			Street Address	
City	State	Zip Code	Phone No.	Date of Application
Property Owner-Name & Address				
Lessor (if other than property owner)—Name & Address				
LOCATION OF OUTDOOR ADVERTISING DEVICE	SIDE OF ROAD (CHECK ONE)	North _____ South _____	East _____ West _____	
Is the device on a controlled access highway?	Yes _____ No _____	Is the device within 1000 Ft. of an entrance or exit?	Yes _____ No _____	
Highway Number U.S. _____ Tenn. _____	Nearest Town or Place _____	Miles from Town or Place _____ Miles North ___ South ___ East ___ West ___		
Present Zoning of Site:		Sign Erection Date		
If unzoned commercial or industrial, name of qualifying activity. _____ COUNTY: _____		No ___ Yes ___	Inside Corporate Limit of City or Town, if yes what City or Town	
Distance to nearest outdoor advertising device in each direction. Same side of road CHECK TWO: _____ Ft. So., _____ Ft. No., _____ Ft. E., _____ Ft. W.				
Sign Material; Face and Uprights: Wood _____ Combination _____ Metal _____ Lighted _____	Area: _____ Sq. Ft. Dimensions: Height _____ Ft. Width _____ Ft.	Shape: _____ Square _____ Triangular _____ Circular _____ Slatted _____ Rectangular _____ Other		

NOTE: The Following Must Accompany This Application

1) A sketch of the sign site location on a separate sheet of paper.
2) A copy of a valid land lease or signed affidavit by the property owner stating permission has been given to erect a sign. (Property owner's signature must be notarized.)
3) A check or money order in the amount of $75.00 payable to the Tennessee Department of Transportation.

FIELD INSPECTION REQUIREMENT: The applicant must mark the location for a **proposed** sign site with an easily visible flag or stake. Failure to properly mark a **proposed** site will result in the rejection of this application; the application fee will be retained as required by law.

This application is for a permit for one facing of an outdoor advertising device. The permit is not transferable to another Outdoor Advertising Device.

I hereby certify that I have personally examined and understand the "Rules and Regulations for the Control of Outdoor Advertising" and this application is made in compliance with same, and further certify that the statements made on the application are accurate and true to the best of my knowledge and understand that if investigation reveals that any of the information on the application is false the permit will be voided, tag confiscated, and the Outdoor Advertising Device will be declared illegal.

I also certify that the only Vegetation Control allowed at this location for signs erected after April 20, 1983, will be to maintain the visibility as it existed on the date of erection.

Signed _____

Name Typed or Printed _____

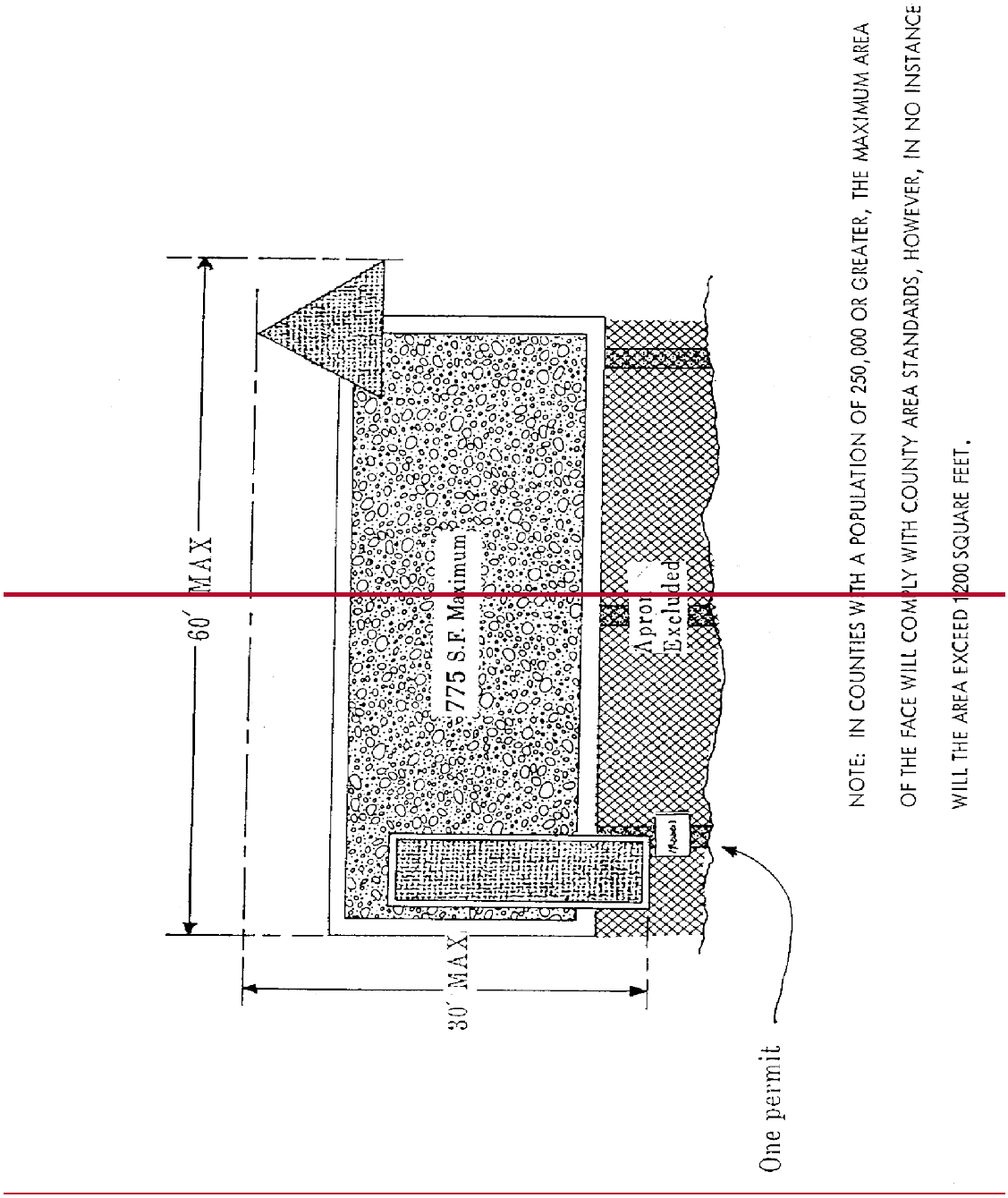
D.O.T. OFFICE USE ONLY

DATE OF ISSUANCE	ISSUED BY	TAG AND PERMIT NUMBER 19____

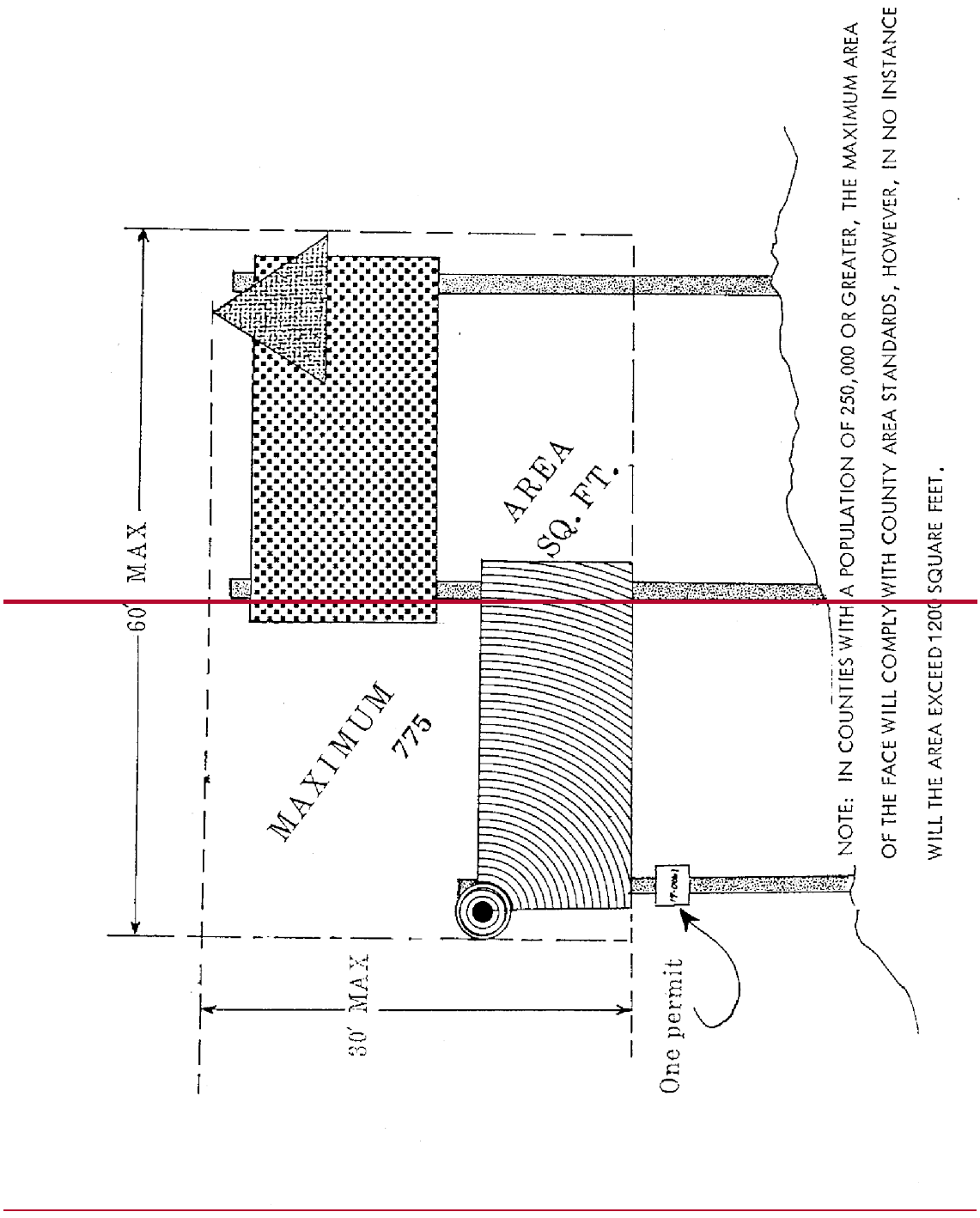
ROW FORM 201
REVISED 07-05-84
DT 0266

Return White, Yellow and Pink Copies to the Outdoor Advertising Control Office
—Retain Orange (last) copy for your files—

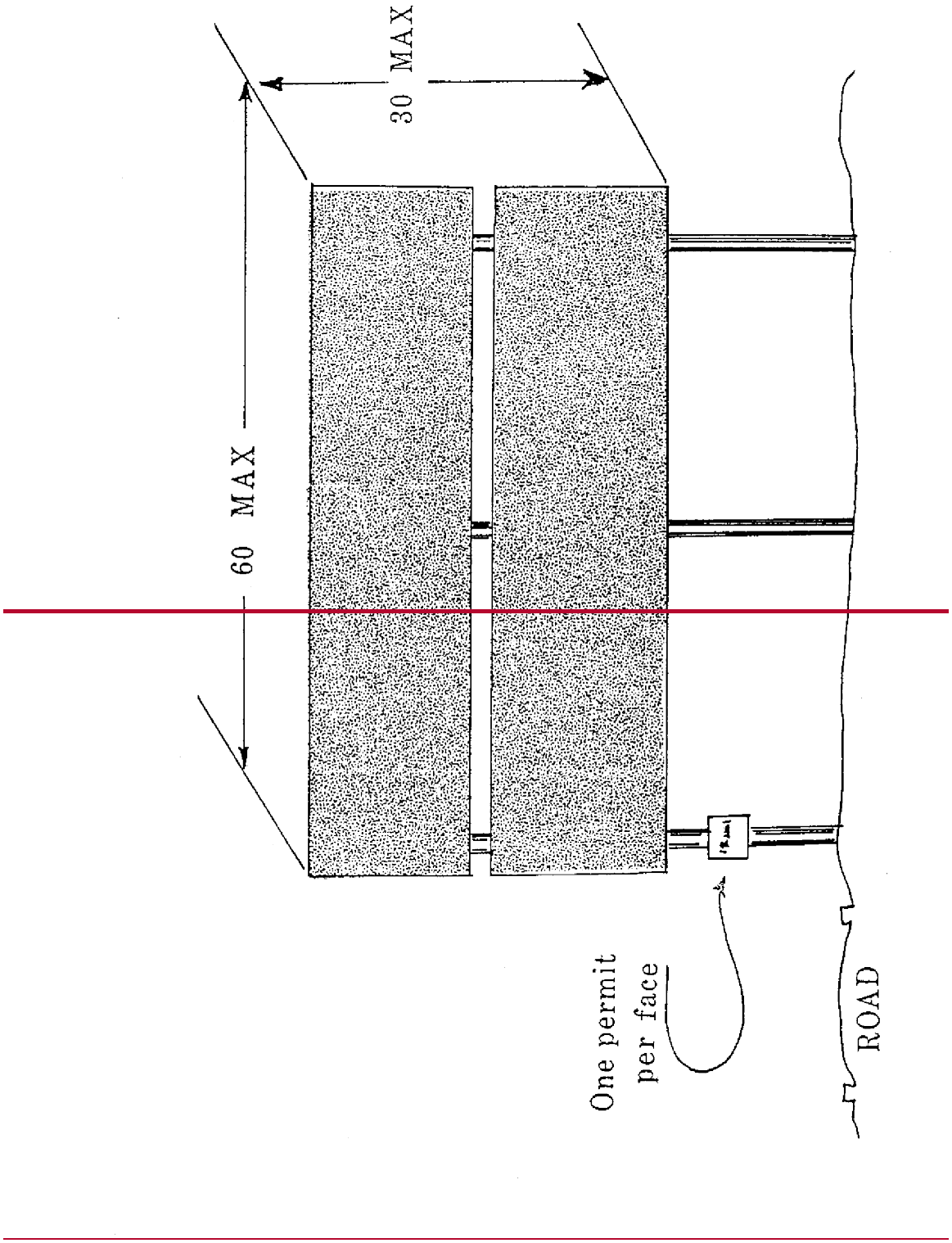
(Rule 1680-02-03-.09, continued)



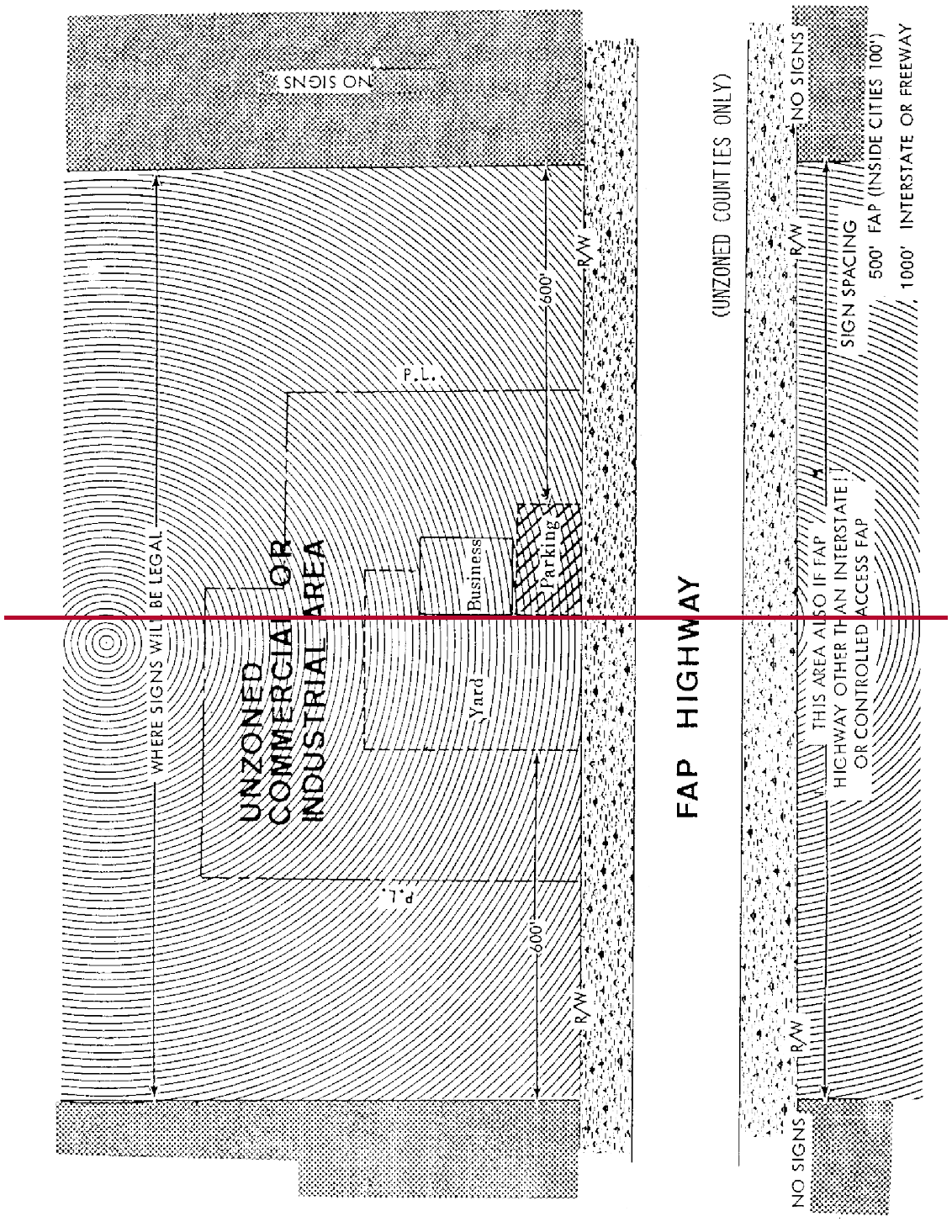
(Rule 1680-02-03-.09, continued)



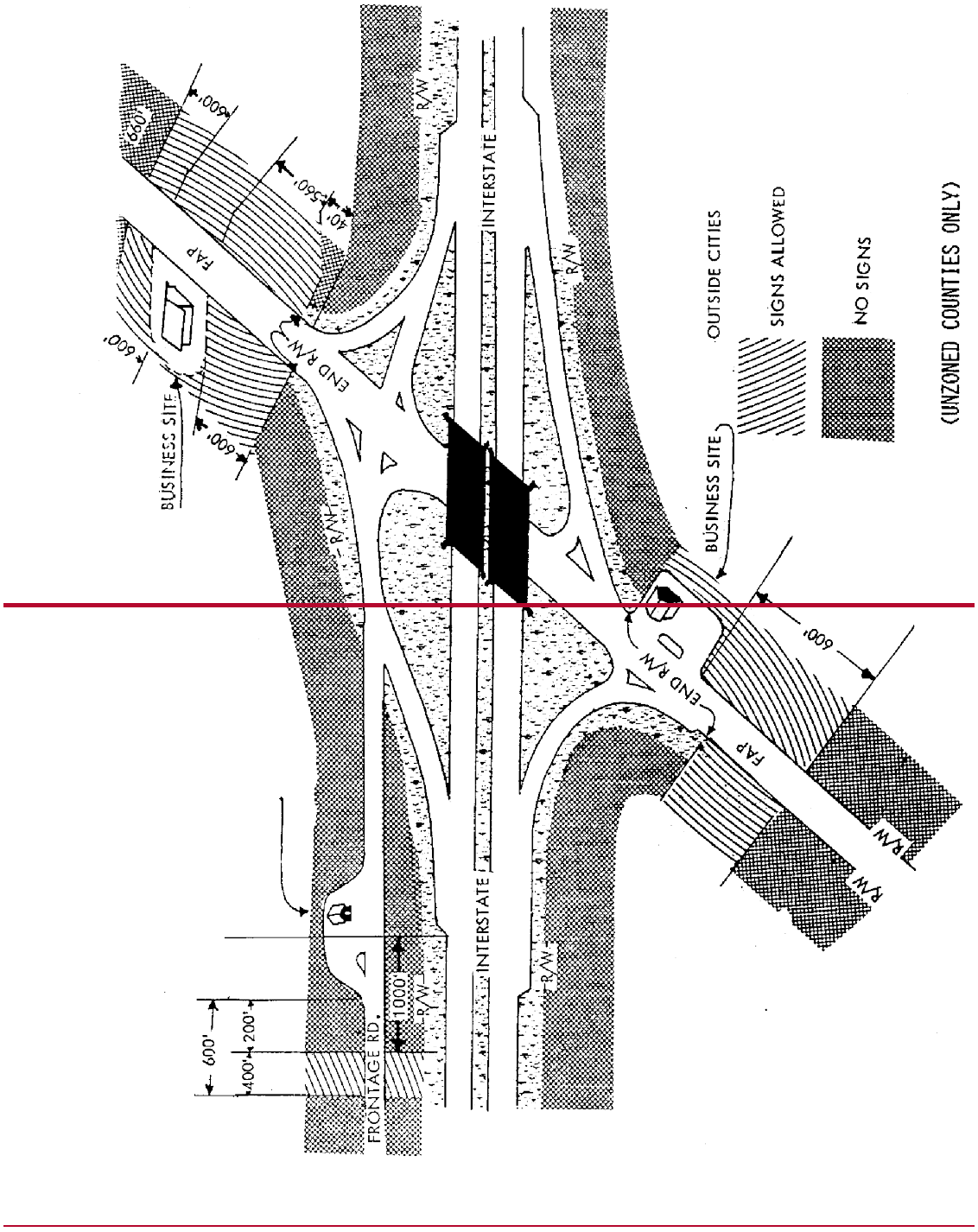
(Rule 1680-02-03-.09, continued)



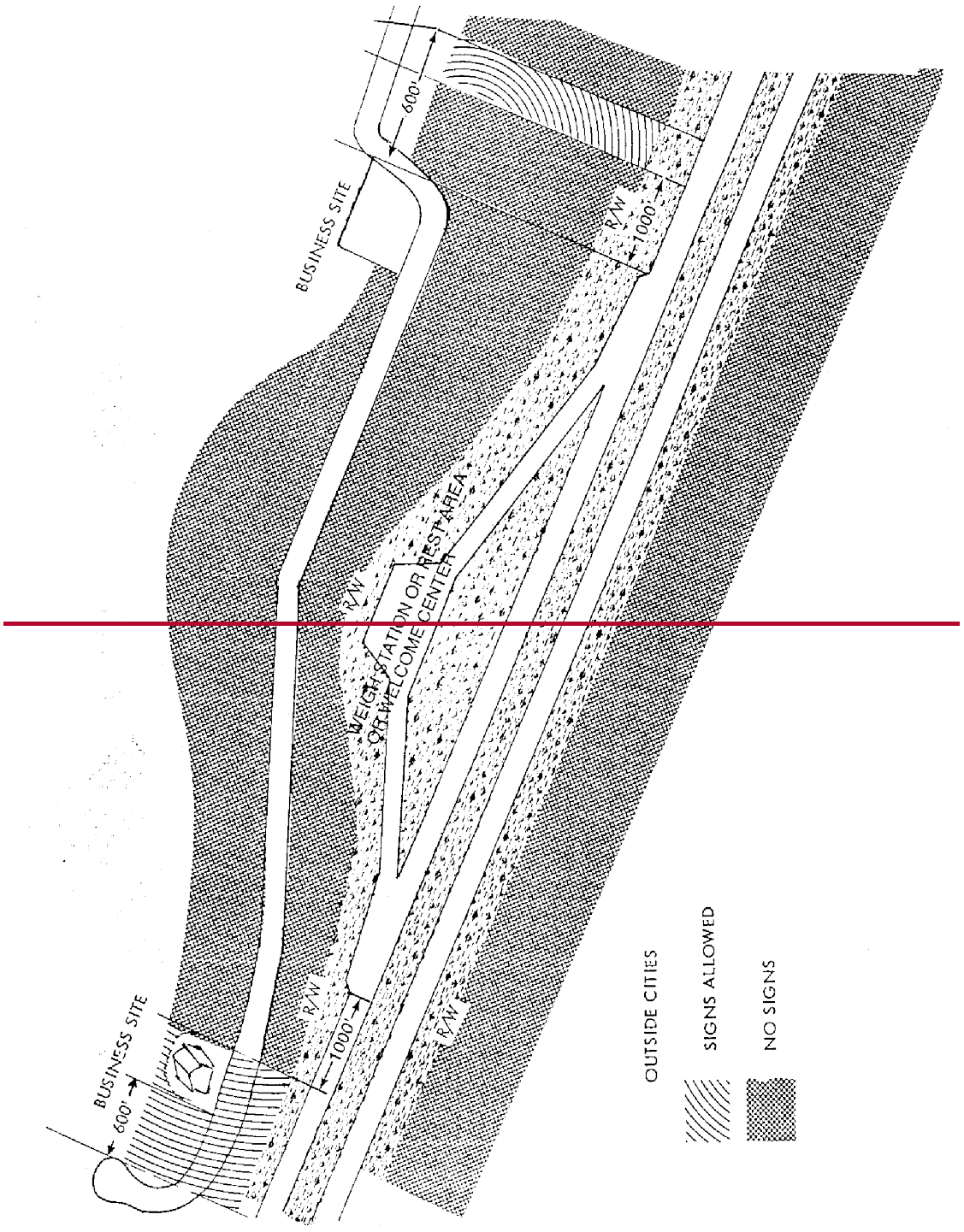
(Rule 1680-02-03-.09, continued)



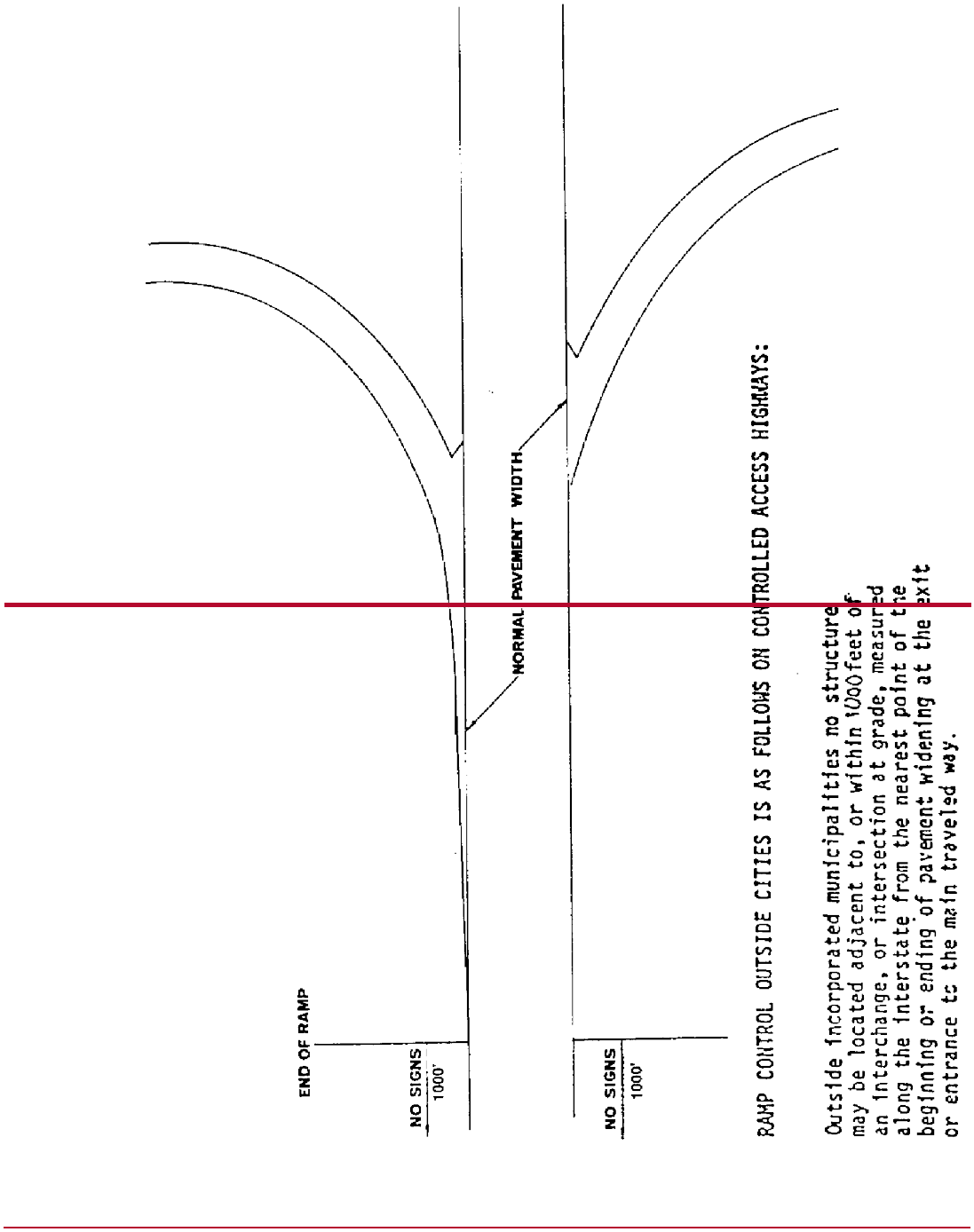
(Rule 1680-02-03-.09, continued)



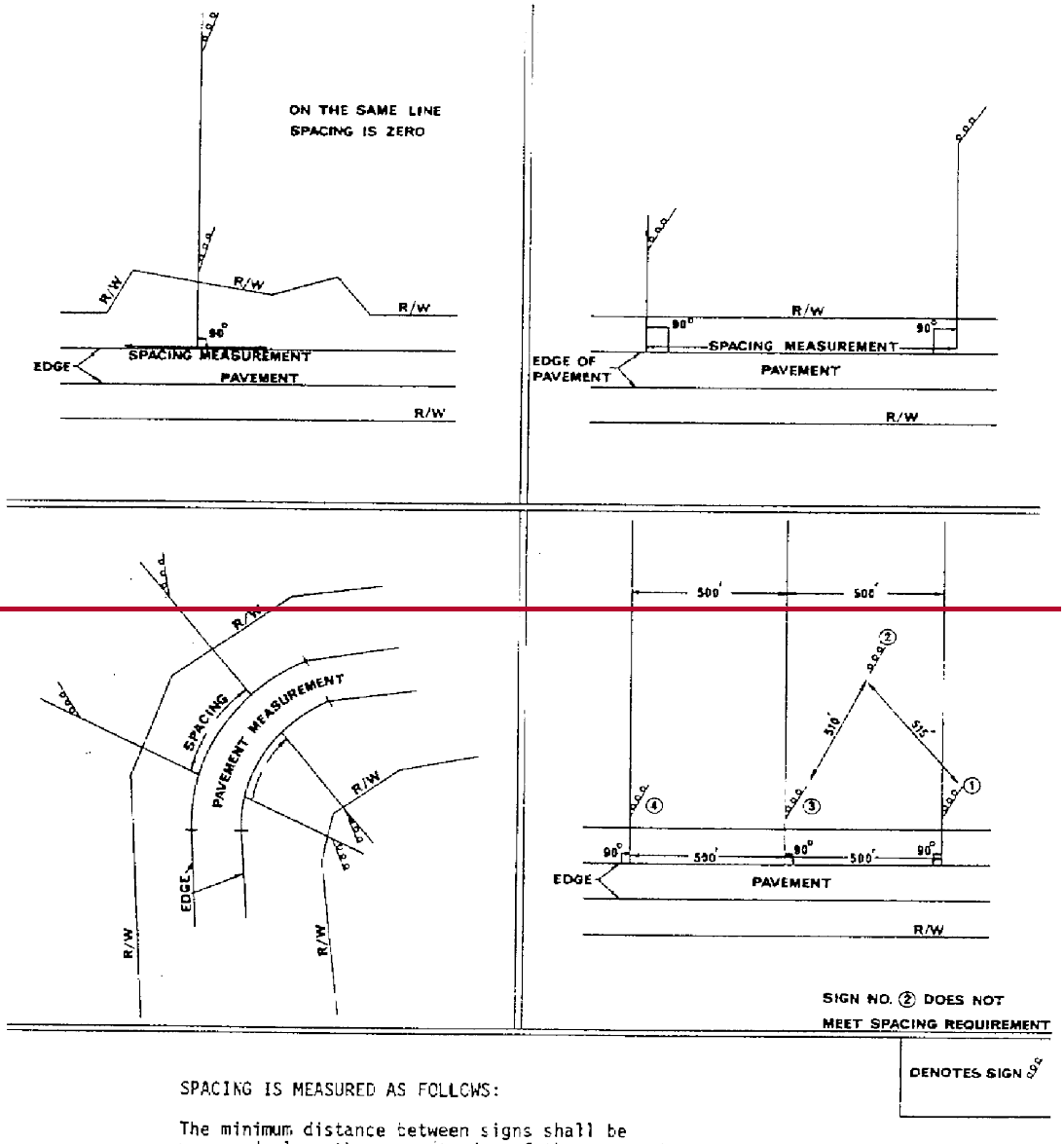
(Rule 1680-02-03-.09, continued)



(Rule 1680-02-03-.09, continued)



(Rule 1680-02-03-.09, continued)



SPACING IS MEASURED AS FOLLOWS:

The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

(Rule 1680-02-03-.09, continued)

Authority: T.C.A. § 54-21-~~23~~111 ~~and U.S.C §131~~. Administrative History: Original rule filed June 9, 1977;effective July 11, 1977. Repeal and new rule filed January 27, 1989; effective March 13, 1989.

~~1680-02-03-.10 THROUGH 1690-2-3-.13 REPEALED.~~

~~Authority: T.C.A. §54-21-23 and U.S.C §131. Administrative History: Original rule filed October 10, 1984; effective November 9, 1984. Repeal filed January 27, 1989; effective March 13, 1989.~~