

Notice of Rulemaking Hearing

Tennessee Department of Transportation Environmental Division

The Tennessee Department of Transportation will hold a public hearing to receive comments concerning the promulgation of amendments to Chapter 1680-02-03, Control of Outdoor Advertising, with respect to applications for and the renewal of permits for outdoor advertising devices along the Interstate System, Federal-Aid Primary System, and National Highway System. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the Auditorium of the Main Administrative Building (Building "A") at the Tennessee Department of Transportation, Region III Office Complex, located at 6601 Centennial Boulevard, Nashville, Tennessee 37243 at 1:00 p.m. CDT on Wednesday, July 23, 2008. (Take Interstate 40 to Exit 204 and take Briley Parkway northbound to Exit 26B, Centennial Boulevard West.)

Written comments will be considered if received by the close of business (4:30 p.m.) on July 23, 2008, in the Office of General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, or if received at the public rulemaking hearing on July 23, 2008.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Department of Transportation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone or other appropriate means, and should be made no less than ten (10) days prior to the public hearing (July 23, 2008) or the date the party intends to review such filings to allow time to provide such aid or service. Such contact may be made with the Department of Transportation's ADA Facilities Coordinator at Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, or e-mail to Margaret.Z.Mahler@state.tn.us, or by telephone at (615) 741-4984 or TDD at (615) 253-8311.

For a copy of this notice of rulemaking hearing, contact: John Reinbold, Tennessee Department of Transportation, Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, telephone number (615) 741-2941.

Substance of Proposed Rules

Chapter 1680-02-03 Control of Outdoor Advertising

Amendments

Rule 1680-02-03-.03, Criteria for the Erection and Control of Outdoor Advertising, is amended by deleting parts 5 and 6 of subparagraph (1)(a) in their entirety and substituting the following language in their place:

5. [reserved]
6. 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 <http://www.tdot.state.tn.us/environment/beautification/>. 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
7345 Region Lane
Knoxville, TN. 37901
Telephone No. 865-594-2451
Fax No. 865-594-6341

Region II - Beautification Office
P. O. Box 22368
4005 Cromwell Road
Chattanooga, TN. 37422-2368
Telephone No. 423-892-3430, Ext. 2293
Fax No. 423-899-1636

Region III - Beautification Office
6601 Centennial Blvd.
Nashville, TN. 37243-0360
Telephone No. 615-350-4389
Fax No. 615-350-3966

Region IV - Beautification Office
300 Benchmark Place
Jackson, TN. 38301-0429
Telephone No. 731-935-0170
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 or driveway by which the applicant can obtain access to the location of the proposed outdoor advertising device 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 certified copy of the applicant's deed or easement, as recorded in the Register of Deed's Office of the county in which the property is located

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 certified copy of the property owner's deed, as recorded in the Register of Deed's Office of the county in which the property is located.

(v) The applicant shall mark the proposed location of the outdoor advertising device in the field by placing a clearly visible 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.

7. 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 is received 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 clearly visible stake as required in these Rules, the Beautification personnel will so notify the Headquarters Beautification Office and the application will be denied.
- (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:
 - (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 Headquarters Beautification 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 as follows:
 - 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 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.
- (xiii) Upon completing the field inspection, Beautification personnel will submit a written 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 outdoor advertising 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.

8. Requirements for Construction of a Permitted Outdoor Advertising Device.

- (i) If a permit is issued, the permitted outdoor advertising device must be fully constructed 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.

9. Voiding of Permits.

- (i) The Commissioner has the authority to void an outdoor advertising permit under the following conditions:
 - (I) Any 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.

10. 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 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.

11. 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).

12. 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 personally delivered to the Headquarters Beautification Office).
- (iii) The permit holder shall notify the Headquarters Beautification Office of any change 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.

13. 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.

Authority: T.C.A. §§ 54-21-104, 54-21-105, and 54-21-112.

Rule 1680-02-03-.07, Removal of Abandoned Signs, is amended by deleting the Rule in its entirety and substituting the following language in its place:

The permit for an abandoned outdoor advertising device shall be voidable after a twelve-month period of abandonment.

Authority: T.C.A. §§ 54-21-104, 54-21-105, and 54-21-112.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of May, 2008. (FS 05-24-08; DBID 683)