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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Environmental Division
Contact Person:	John H. Reinbold, General Counsel
Address:	505 Deaderick Street, Suite 300, Nashville, TN 37243
Phone:	615-741-2941
Email:	John.Reinbold@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Margaret Z. Mahler, ADA Compliance
Address:	505 Deaderick Street, Suite 1200, Nashville, TN 37243
Phone:	615-741-4984; TTY: 615-253-8311
Email:	Margaret.Z.Mahler@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Transportation, Region 3 Auditorium		
Address 2:	6601 Centennial Boulevard		
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	Wednesday, November 4, 2020		
Hearing Time:	1:00 p.m. CST	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Location: From Briley Parkway (SR-155), take Exit 26B to Centennial Blvd. westbound. The Region 3 office complex is on the left. Go to the main administrative building (Building A). The Region 3 Auditorium is located on the first floor of Building A just inside the main doors.

Public Comments: Public comments on the proposed rulemaking will be received at the public hearing beginning at 1:00 p.m. CST on November 4, 2020. In addition, interested parties may submit written comments on or before 4:30 p.m. on November 4, 2020, by mail or email to the following address:

John H. Reinbold, General Counsel
Tennessee Department of Transportation
James K. Polk Building, 3rd Floor
505 Deaderick Street, Nashville, TN 37243
John.Reinbold@tn.gov

A copy of Chapter 1680-02-03 as amended, and renumbered as Chapter 1680-11-01, is available on the TDOT website at <https://www.tn.gov/tdot/transportation-quick-links/upcoming-events.html>.

Note: The Department may provide for remote participation in the public rulemaking hearing via WebEx. Please refer to postings on the referenced website or contact the person above for additional information.

Revision Type (check all that apply):

☒ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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

Place substance of rules and other info here. 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 Environmental Division" and is further amended by changing the chapter's control number from 1680-02-03 to 1680-11-01.

Chapter 1680-11-01, as renumbered, is further amended by deleting the current table of contents and substituting the following table of contents:

1680-11-01-.01	Preface
1680-11-01-.02	Definitions
1680-11-01-.03	Criteria for the erection and control of outdoor advertising devices
1680-11-01-.04	Permits, renewals, and administrative hearings
1680-11-01-.05	Control of nonconforming outdoor advertising devices
1680-11-01-.06	On-premises devices
1680-11-01-.07	Removal of abandoned devices
1680-11-01-.08	Vegetation control
1680-11-01-.09	Complaint procedures
1680-11-01-.10	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:

1680-11-01-.01 Preface.

The purpose of these regulations is to implement and enforce the Outdoor Advertising Control Act of 2020 (effective June 22, 2020) so as 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.

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:

1680-11-01-.02 Definitions.

- (1) "Abandoned outdoor advertising device" means any regulated outdoor advertising device which for a twelve-month period falls into one or more of the following classifications:
 - (a) A device in substantial need of repair;
 - (b) A device whose sign face or faces is damaged fifty percent or more;
 - (c) A device that displays only a message of its availability for advertising purposes; or
 - (d) A device that has been removed from its permitted location for more than twelve (12) months.(See illustrations in Rule 1680-11-01-.10, 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.

- (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 1680-11-01-.10, 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 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 1680-11-01-.10, 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 1680-11-01-.10, 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 1680-11-01-.10, 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 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.
- (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, but does include any other sign not specifically exempted from regulation under the Outdoor Advertising Control Act of 2020 to the extent required under federal law.
- (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" 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.
- (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; 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.
- (32) "Sign face" means the entire surface area of a sign intended for the display of advertising or informative content and includes any additional area extending from the sign, taken as a single measurement of a square, rectangle, or circle, within which such advertising or informative content is actually displayed. See illustration in Rule 1680-11-01-.10, Appendix.
- (33) "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.
- (34) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.
- (35) "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. 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 600 feet 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 1680-11-01-.10, Appendix.)
- (36) "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.
- (37) "Visible" means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.
- (38) "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, or "void" may mean a permit that has been terminated at the permittee's request.
- (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.

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:

1680-11-01-.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 following restrictions:

(a) Zoning:

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 1680-11-01-.02.)
2. The following types of advertising 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 1680-11-01-.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.

(b) Size:

1. The maximum total gross area for a sign face on an outdoor advertising device 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 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 exclusive of ornamental base or apron supports and other standard members.
3. The area shall be measured by the smallest single measurement of a square, rectangle, circle that will encompass the entire sign.

4. An outdoor advertising device may contain one sign face per horizontal facing and may be stacked (to the extent authorized in T.C.A. § 54-21-118), back-to-back or V-type, but the total area of any sign face 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.
5. See illustrations in Rule 1680-11-01-.10, 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. §§ 54-17-109 and 54-17-206.

(c) Lighting:

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 (f) 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.

(d) Spacing:

1. Interstate Highway Systems and Controlled Access Primary Highways.
 - (i) No two outdoor advertising devices shall be spaced less than 1,000 feet 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) device is visible from the highway at any one (1) time. (See illustration in Rule 1680-11-01-.10, 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 1680-11-01-.10, 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 100 feet 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 1680-11-01-.10, 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. §§ 54-17-109 and 54-17-206.

(e) Control of Original Conforming Devices.

- 1. An original conforming device, as defined in Rule 1680-11-01-.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 approval from the Headquarters Beautification 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. If an original conforming device is removed without prior approval from the Headquarters Beautification Office to rebuild, reconstruct, or upgrade the device, no new permit shall be issued for another outdoor advertising device at that location.
- (f) 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 Item (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).
- (2) Restrictions on outdoor advertising devices adjacent to interstate and primary highways beyond 660 feet of the nearest edge of the right-of-way outside of urban areas.
- (a) Control of outdoor advertising devices extends to outdoor advertising devices and displays 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.
 - (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 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. §§ 54-21-103, 54-21-108, 54-21-111, 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:

1680-11-01-.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 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
Telephone No. 615-741-2877
Email: TDOT.ODA.HBO@tn.gov

Region I - Beautification Office
7345 Region Lane
Knoxville, TN. 37914
Telephone No. 865-594-2451
Email: TDOT.ODA.HBO@tn.gov

Region II - Beautification Office
7512 Volkswagen Drive
Chattanooga, TN 37416
Telephone No. 423-892-3430, Ext. 2293
Email: TDOT.ODA.HBO@tn.gov

Region III - Beautification Office
6601 Centennial Blvd.
Nashville, TN. 37243
Telephone No. 615-350-4389
Email: TDOT.ODA.HBO@tn.gov

Region IV - Beautification Office
300 Benchmark Place
Jackson, TN. 38301
Telephone No. 731-935-0170
Email: TDOT.ODA.HBO@tn.gov

- (c) A complete original application for an outdoor advertising device 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.
- (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 Office);
 - 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 (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:
 - (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 landowner on the application must match the landowner's name on the affidavit exactly as the name on the property record card.

- (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:
 - (I) Certify that the property owner has given the applicant permission to construct and operate the proposed outdoor advertising device at the proposed location; 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. The name of the landowner on the application must match the landowner's name on the affidavit exactly as the name on the property record card.
- (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 Headquarters Beautification Office. An incomplete application will not be considered.
- (b) 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) 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) 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.
- (e) 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.
- (f) 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.
- (g) Upon receiving a complete application, the assigned Beautification personnel will initiate a field inspection of the proposed location for the outdoor advertising device.
- (h) 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.

- (i) The Beautification personnel shall complete the field inspection on the later filed application, and if they find 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 Beautification personnel shall notify the Headquarters Beautification Office that a minimum spacing conflict exists.
- (j) 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:
 - 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 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:
 - (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.
- (k) 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.
- (l) 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.
- (m) Upon completing the field inspection, Beautification personnel will submit a written field inspection report to the Headquarters Beautification Office.
- (n) 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.

- (o) 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.
 - (p) 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.
 - (q) 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.
 - 1. The application must be accompanied by payment of the application fee set in T.C.A. § 54-21-104.
 - 2. The Department shall not deny a permit for an existing outdoor advertising device under this Subparagraph (q) 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 (q) 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; or
 - (iv) Issuance of the permit would violate federal law.
 - 4. Before denying a permit on any of the grounds provided in Subparagraph (q), Part 2, the Department shall notify the applicant in writing of the violation that prevents issuance of the permit. The Department shall also give the applicant a reasonable amount of time to undertake such action, if any, that would cure the violation. 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 (q) 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 part. 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)(q).
 - (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 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. If the permit holder does not construct the sign face in accordance with the approved application, 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;
 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 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.
 - (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 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 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.
- (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 1360-4-1.
 - (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 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).
- (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 § 54-21-104 (provided that payment in cash will be accepted if personally delivered to the Headquarters Beautification Office).
 - (c) The permit holder shall notify the Headquarters Beautification 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 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.
- (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 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).
 - (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 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:

1680-11-01-.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 1680-11-01-.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 as the replacement of the sign face or stringers, but not the replacement of any pole, post, or support structure.
 - (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 Highway Beautification Office.
 - (c) The current holder of the permit or sign owner, if different, must submit a written request for approval to the Highway Beautification 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.
 - (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 Region Beautification Office once rebuilding or repair has been completed for field inspection.
- (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 1680-11-01-.10, 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 and 54-21-111.

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:

1680-11-01-.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 1680-11-01-.03 or to the permitting requirements established in Rule 1680-11-01-.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. §§ 54-17-109 and 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 1680-11-01-.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 purposed 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 must not be receiving or intend to receive compensation from the operation of 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 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" 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 1680-11-01-.10, 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:

1680-11-01-.07 Removal of abandoned devices.

- (1) The permit for an abandoned outdoor advertising device shall be voidable after a twelve-month period of abandonment.
- (2) See illustration in Rule 1680-11-01-.10, Appendix, for examples of abandoned devices versus devices that are not abandoned or only damaged.

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:

1680-11-01-.08 Vegetation control.

- (1) Definitions.
 - (a) For the purpose of T.C.A. § 54-21-116, generally visible 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 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 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.
- (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 which blocked the view of the outdoor advertising device on the date of erection will not be eligible for removal.

(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 Highway Beautification 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 to cut, trim, or remove vegetation located on the right-of-way adjacent to the device, and the Department shall issue the permit.
- (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 non-compliant devices 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 Highway Beautification Office, Department of Transportation, Environmental 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) dollars as a non-refundable fee; and
 - 3. Attach the following 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; and
 - (iv) A scale drawing showing the proposed replacement vegetation plan.
- (d) If the vegetation control permit is granted the applicant must provide the following:

1. A check or money order in the amount of one hundred fifty dollars (\$150.00) made payable to the Tennessee Department of Transportation;
 2. A surety bond in the amount of \$5,000 for each separate vegetation control permit (on a form provided by the Department); and
 3. A certificate of insurance in the amount of not less than \$300,000 for each person injured and \$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 control permit is issued, the applicant shall abide by all conditions imposed by the Department, as set forth on the face of the permit, or suffer permit revocation and other consequences of law. See illustrations in Rule 1680-11-01-.10, Appendix.
- (f) 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.
- (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 non-compliant devices 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 will be followed in order to apply for a vegetation maintenance permit:
1. Request a vegetation maintenance application form;
 2. Return completed application to Highway Beautification Office, Department of Transportation, Environmental 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; and
 - (v) A scale drawing showing the proposed replacement vegetation plan.
- (d) If the vegetation maintenance permit is granted the applicant must provide the following:
1. A surety bond in the amount of \$2,500 for each separate vegetation maintenance permit (on a form provided by the Department); and

2. A certificate of insurance in the amount of not less than \$300,000 for each person injured and \$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 suffer permit revocation and other consequences of law.
- (f) Vegetation control maintenance permits may be issued year round; however, if replacement vegetation is required, a vegetation maintenance permit may be issued only between April 15 and October 1.

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

Rule 1680-02-03-.09, Appendix, is amended by renumbering the current rule as Rule 1680-11-01-.10 and inserting the following language as a new rule:

1680-11-01-.09 Complaint procedures.

- (1) The Department will accept and investigate all written complaints on a specific sign structure, sign company, or any other issue under the jurisdiction of the Highway Beautification Office.
- (2) The complaints may be filed via the Department's website or by mail.
- (3) If the complaint involves a sign structure or a sign company the Department will notify the owner of the sign or sign company of the complaint and the pending investigation within fifteen (15) days of receipt of the complaint. This notification will include a copy of the complaint and complaint investigation procedures.
- (4) If the complaint included contact information, the Department will provide the complainant with a copy of the complaint procedures within fifteen (15) days of the receipt of the complaint.
- (5) If the complaint involves fewer than ten (10) signs the Department will investigate the complaint and make a finding within sixty (60) days of the receipt of the complaint. If the complaint involves ten (10) or more signs or is an investigation of a sign company or any other sign matter the Department will make a finding within ninety (90) days of the receipt of the complaint. The Department will give priority to the investigation of complaints alleging that a sign or sign company is violating State or Federal law.
- (6) If the Department is unable to meet the deadlines in Paragraph (5), the Department will notify the complainant, the sign owner, or sign company of the delay and will provide a date for the completion of the investigation.
- (7) The Department will provide the complainant, sign owner, or sign company the findings of the investigation, which will include whether administrative enforcement actions are being initiated.
- (8) These complaint procedures will be published on the Department's website at the Highway Beautification Office's webpage.
- (9) The Highway Beautification Office will maintain a record of all complaints and findings, and it will annually publish on its website a list of the complaints received in the previous calendar year with a link to the text of the complaints and findings in each case.

Authority: T.C.A. § 54-21-111.

Rule 1680-11-01-.10 (as renumbered) will contain the Appendix to this chapter, as amended. The Department intends to delete the current Appendix at Rule 1680-02-03-.09 in its entirety and substitute a new Appendix at Rule 1680-11-01-.10 to include the following items, or types of items, for reference purposes:

- (1) Copies of the agreements between the Department and the Federal Highway Administration relative to the control of outdoor advertising, including the original agreement, dated November 11, 1971, and supplemental agreement, dated October 16, 1984; and
- (2) A series of illustrations intended to provide a further explanation of certain rules through visual representations, including without limitation:
 - (a) Defined terms, such as "abandoned outdoor advertising device"; "customary maintenance"; "destroyed"; "double-faced, back-to-back, and V-type signs"; and "unzoned commercial or industrial area";
 - (b) Measurement of sign face size;
 - (c) Spacing restrictions and measurement of distances between signs;
 - (d) Damaged vs. destroyed nonconforming devices;
 - (e) Location criteria for on-premises devices;
 - (f) Abandoned vs. damaged devices; and
 - (g) Vegetation control.

Proposed illustrations for the Appendix are currently under development. Copies will be provided on the Department's website

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/14/2020

Signature: Clay Bright

Name of Officer: Clay Bright

Title of Officer: Commissioner

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State