

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 6—Outdoor Advertising

PROPOSED AMENDMENT

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7 CSR 10-6.040 Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas. The Missouri Highways and Transportation Commission is amending sections (2)(C), (4), (4)(A) through (4)(D), (4)(G) through (4)(I), (5), (6)(A), (6)(B), (7)(A) and (7)(B).

PURPOSE: This amendment removes unnecessary restrictive language and modifies the static display time for an automatic changeable display or digital technology.

(2) Criteria for Determination of Zoned and Unzoned Commercial and Industrial Areas.

(C) Primary Use Test.

1. In General. In order for an area to qualify as an unzoned commercial or industrial area, the primary use or activity conducted on the property must be of a type customarily and generally required by local comprehensive zoning authorities in Missouri to be restricted as a primary use to areas which are zoned industrial or commercial. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an unzoned commercial or industrial area. Activities incidental to the primary use of the property, such as a kennel or repair shop in a building or on property which is used primarily as a residence, do not constitute commercial or industrial activities for the purpose of determining the primary use of an unzoned area even though income is derived from the activity. If, however, the activity is primary and local comprehensive zoning authorities in Missouri would customarily and generally require the use to be restricted to a commercial or industrial area, then the activity constitutes a commercial or industrial activity for purposes of determining the primary use of the property even though the owner or occupant of the land may also live on the property.

2. Visible. The purported commercial or industrial activity must be visible from the main-traveled way *[within the boundaries of that unzoned commercial or industrial area]* by a motorist of normal visual acuity traveling at the maximum posted speed limit on the main-traveled way of the highway.

3. Recognizable. The purported commercial or industrial activity must be recognizable as a commercial or industrial enterprise as viewed from both directions of travel of the adjacent interstate or primary highway. In addition, the activity must comply with each of the following:

A. Structure and grounds requirements **for business or office**—

(I) *[Area. Any structure to be used as a business or office must have a]* An enclosed area of two hundred (200) square feet or more;

(II) *[Foundation. Any structure to be used as a business or office must be a]* Affixed on a slab, piers, or foundation in accordance with minimum local building code requirements;

(III) *[Access. Any structure to be used as a business or office must have a]* Approved access from a roadway and readily accessible by the motorist to a defined customer parking lot adjacent to the business building;

(IV) *[Utilities. Any structure to be used as a business or office must have n]* Normal utilities. Minimum utility service shall include: business telephone, electricity, restroom, water service, and waste water disposal, all in compliance with appropriate local, state, and county

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rules;

(V) *[Identification. The purported enterprise must be i]*Identified as a commercial or industrial activity which may be accomplished by on-premises signing or outside visible display of product;

(VI) *[Use. Any structure to be used as a business or office must be u]*Used exclusively for the purported commercial or industrial activity; and

(VII) *[Mobile Home or Recreational Vehicle.]* **Removal of [A]all wheels, axles, and springs [must be removed] on mobile home or recreational vehicles;**

B. Activity requirements. In order to be considered a commercial or industrial activity for the purpose of outdoor advertising regulation, the following conditions must be met:

(I) An owner or employee *[must be]* on the premises for at least twenty (20) hours per week and these hours *[must be]* posted on the premises;

(II) The purported activity or enterprise *[shall]* maintains all local business licenses, occupancy permits, sales tax, and other records as may be required by applicable state, county, or local law or ordinance;

(III) A sufficient inventory of products *[must be]* maintained for immediate sale or delivery to the consumer. If the product is a service, it *[must]* **will** be available for purchase on the premises; and

(IV) The purported activity or enterprise *[must]* **will** be in active operation a minimum of one hundred eighty (180) days prior to the issuance of any outdoor advertising permit. The one hundred eighty- (180-) day time frame begins when the business activity is in compliance with all business requirements as set forth in sections 226.500 to 266.600, RSMo and this rule.

(4) A permit may be granted for an automatic changeable display or digital technology. To promote highway safety, automatic changeable displays and digital technology *[shall]* **will** meet the following conditions:

(A) The static display time for each message is a minimum of *[ten] eight ([10] 8)* seconds;

(B) The time to completely change from one (1) message to the next for an automatic changeable display is a maximum of two (2) seconds, and the time to completely change from one (1) message to the next for digital technology *[shall be]* **is** instantaneous with no discernible time gaps between displays;

(C) The change of message *[must]* occurs simultaneously for the entire sign face;

(D) The outdoor advertising structure meets all other requirements in sections 226.500 to 226.600, RSMo, and this rule. Any such sign *[shall]* **will** be designed such that the sign will freeze in one (1) position if a malfunction occurs;

(G) No projected image(s) or message(s) *[shall]* appears to move or be animated;

(H) The sign luminance *[shall]* **will** not exceed three hundred (300) candelas per square meter in full white mode between the periods of sunset to sunrise as calculated by the United States Naval Observatory; and

(I) In accordance with section 226.541, RSMo, if allowed by local regulations, a conforming out of standard sign may be upgraded with digital technology provided—

1. Up to twenty percent (20%) of the sign face, not to exceed one hundred sixty (160) square feet of area may be upgraded with digital technology for displaying text or numbers; or

2. More than twenty percent (20%) of the sign face may be upgraded with digital technology only if it maintains a distance of at least one thousand four hundred feet (1,400') from any other such digital technology display sign in which more than twenty percent (20%) of the sign face

contains digital technology. Permit owners *[shall]* **will** submit a written request to upgrade more than twenty percent (20%) of the sign face with digital technology and obtain approval prior to making any changes to the sign. Written upgrade requests will be time and date stamped upon their receipt and priority in contested areas will be assigned in chronological order. If granted, the approval to upgrade to digital technology will expire twelve (12) months from the date it is issued.

(5) Reconstruction or Repair of Conforming out of Standard Signs. Conforming out of standard signs *[shall]* **will** not be substantially rebuilt as provided in section 226.541, RSMo. A conforming out of standard sign that is substantially rebuilt *[shall]* **will** be considered unlawful and any permit issued by the commission for the sign *[shall be]* voided and the fee *[shall be]* retained by the commission.

(6) Moratorium of New Outdoor Advertising Permits.

(A) A moratorium of new outdoor advertising permits will be imposed within the outdoor advertising control area for that section of highway scheduled for construction where funding for right-of-way acquisition is approved by the commission under the Statewide Transportation Improvement Program;

(B) For purposes of the moratorium, completion of construction as used in section 226.541, RSMo, *[shall]* **will** mean when a final inspection is performed by the commission and all construction is determined to be completed to the satisfaction of the commission without any requested changes or corrections.

(7) Sign Reset Agreement Program. For the purposes of implementing the sign reset agreement program pursuant to section 226.541, RSMo, the following shall apply:

(A) A sign permit amendment *[shall]* **will** be issued only to qualifying signs that are displaced within the construction limits of any phase or portion of construction of any street or highway where funding for right-of-way acquisition is approved by the commission under the Statewide Transportation Improvement Program;

(B) Reset signs *[must]* **will** be reconstructed of the same type materials and may not exceed the square footage of the original sign structure as it existed on the date of the Notice of the Intended Acquisition.

*AUTHORITY: section 226.150, RSMo 2000, and sections 226.500–226.600, RSMo 2000 and Supp. 2013. * Original rule filed Feb. 6, 1974, effective March 8, 1974. Amended: Filed June 9, 1975, effective July 9, 1975. Rescinded and readopted: Filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed Feb. 4, 1991, effective Aug. 30, 1991. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Amended: Filed Oct. 3, 2013, effective May 30, 2014. Amended: Filed September 8, 2017.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.500–226.600, see Missouri Revised Statutes 2000 and Supp. 2013.*

State ex rel State Highway Commission v. Heil, 597 SW2d 257 (Mo. App. 1980). The selling of gravel by a farmer from his/her gravel pit is a “commercial” pursuit in contemplation of section

226.540, RSMo (Supp. 1976).

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, Missouri 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*