A. The sign meets all requirements for lawful, conforming outdoor advertising signs in effect at the time the advertising changes from advertising on-premises activities to advertising off-premises activities; and

B. The sign owner receives an outdoor advertising permit issued by the commission prior to changing the advertising from advertising on-premises activities to advertising off-premises activities.

2. For purposes of outdoor advertising control, the date of erection of the outdoor advertising is the date the sign changes from advertising on-premises goods and services to off-premises goods and services.

(E) Cessation of On-Premises Activity. To promote highway safety, upon the cessation or termination of a business activity within the regulated area along the primary and interstate highway system, the sign owner has thirty (30) days to remove on-premises advertising. After thirty (30) days, the sign will no longer qualify as an on-premises sign and will be subject to the same conditions and requirements as off-premises outdoor advertising signs. The cessation or termination of a business activity does not constitute a changed condition so as to render an on-premises sign a nonconforming outdoor advertising sign.

(3) Permits. There are no state permit requirements for on-premises advertising, sections 226.530 and 226.550, RSMo.

AUTHORITY: sections 226.150, and 226.500–226.600, RSMo 2016 and RSMo Supp. 2017. Original rule filed Feb. 1, 1973, effective March 2, 1973. Amended: Filed Dec. 20, 1973, effective Jan. 30, 1974. Amended: Filed Sept. 19, 1974, effective Oct. 19, 1974. Rescinded and readopted: Filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Amended: Filed Oct. 3, 2013, effective May 30, 2014. Amended: Filed Sept. 8, 2017, effective April 30, 2018.*

Original authority: 226.150, RSMo 1939, amended 1977 and 226.500–226.600, see* ***Missouri Revised Statutes* *2016 and Supp. 2017.*

7 CSR 10-6.040 Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas

PURPOSE: This rule supplements the requirements for erection and maintenance of outdoor advertising in zoned and unzoned commercial and industrial areas authorized by sections 226.520(3) and 226.520(4), RSMo.

(1) Definitions (see section 226.541, RSMo, and 7 CSR 10-6.015).

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

(A) Zoned Commercial and Industrial Areas. The following does not constitute a zoned commercial or industrial area:

1. An area or district which has been spot zoned or strip zoned for outdoor advertising;

2. An area or district which merely allows commercial or industrial activities as well as outdoor advertising as an incident to the primary land use which is other than a zoned commercial or industrial area. Examples are: agricultural, rural, unclassified, greenbelt, buffer zoning, or other similar classifications which may allow specified commercial or industrial land uses including outdoor advertising; and residential and multi-family zoning classifications which may allow outdoor advertising and specified home occupations such as barber shops, beauty shops, kennels, repair shops, or professional offices;

3. An area or district which requires a special use permit, special zoning classification, or variance as a condition to the use of the area for an activity generally considered industrial or commercial.

(B) Unzoned Commercial and Industrial Area. In order to qualify as an unzoned commercial or industrial area, the property on which the qualifying business is located must satisfy the primary use test found in subsection (2)(C).

(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 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) An enclosed area of two hundred (200) square feet or more;

(II) Affixed on a slab, piers, or foundation in accordance with minimum local building code requirements;

(III) Approved access from a roadway and readily accessible by the motorist to a defined customer parking lot adjacent to the business building;

(IV) 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 rules;

(V) Identified as a commercial or industrial activity which may be accomplished by on-premises signing or outside visible display of product;

(VI) Used exclusively for the purported commercial or industrial activity; and

(VII) Removal of all wheels, axles, and springs 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 on the premises for at least twenty (20) hours per week and these hours posted on the premises;

(II) The purported activity or enterprise 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 maintained for immediate sale or delivery to the consumer. If the product is a service, it will be available for purchase on the premises; and

(IV) The purported activity or enterprise 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.

(3) Permits (see 7 CSR 10-6.070 for state permit requirements).

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

(A) The static display time for each message is a minimum of eight (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 is instantaneous with no discernible time gaps between displays;

(C) The change of message 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 will be designed such that the sign will freeze in one (1) position if a malfunction occurs;

(E) The image does not flash or flicker in accordance with section 226.540(1)(A), RSMo;

(F) The image is projected onto a securely fixed, substantial structure and in accordance with the provisions in sections 226.500 to 226.600, RSMo;

(G) No projected image(s) or message(s) appears to move or be animated;

(H) The sign luminance 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 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 will not be substantially rebuilt as provided in section 226.541, RSMo. A conforming out of standard sign that is substantially rebuilt will be considered unlawful and any permit issued by the commission for the sign voided and the fee 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, 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.

(C) New applications for permit to erect and/or maintain outdoor advertising will not be accepted for any phase or portion of construction or reconstruction of any street or highway imposed by a moratorium until said moratorium is lifted.

(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 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 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: sections 226.150, and 226.500–226.600, RSMo 2016 and RSMo Supp. 2017. 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 Sept. 8, 2017, effective April 30, 2018. ***

Original authority: 226.150, RSMo 1939, amended 1977 and 226.500–226.600, see* ***Missouri Revised Statutes* *2016 and Supp. 2017.*

***Pursuant to Executive Orders 20-04 and 20-10, 7 CSR 10-6.040, section (6) was suspended from May 7, 2020 through June 15, 2020.*

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).*

7 CSR 10-6.050 Outdoor Advertising Beyond Six Hundred Sixty Feet (660') of the Right-of-Way

PURPOSE: This rule applies to outdoor advertising erected or maintained beyond six hundred sixty feet (660') of the right-of-way visible from the main-traveled way of the interstate or primary highway system and erected with the purpose of its message being read from the traveled way. This outdoor advertising is regulated under section 226.527, RSMo and 23 U.S.C. 131(c).

(1) Definitions (see 7 CSR 10-6.015).

(2) Determination of Urban Areas. The term urban area is defined by section 226.510(6), RSMo.

(3) Determination of Purpose.

(A) Criteria. The department's authorized representative shall determine under section 226.527, RSMo, when a sign is erected with the purpose of its message being read from the main-traveled way of an interstate or primary highway after consideration of, but not limited to, the following and any other relevant criteria:

1. Angle. The positioning or angle of a sign to an adjacent highway;