

DEFINITION FOR DESTROYED SIGNS

QUESTION: How other states deal with destroyed signs? Tennessee is being required by FHWA to remove the "natural disaster clause" from our current Rules and Regulations. In the process of that change to our Rules we must now create a definition for a "destroyed" sign. With that in mind, we solicit your response to the following questions.

- (1) What is your state's definition for a destroyed nonconforming sign?
- (2) What is your state's definition for customary, regular or normal maintenance, which is allowed to be performed on nonconforming signs ?
- (3) What, if any, relationship do destroyed nonconforming signs have with how your state administers customary maintenance for nonconforming signs ?

Thank you for your help in this matter.

WHO: Rod Boehm, Transportation Manager, Tennessee DOT, Environmental Division, Beautification Office, Outdoor Advertising Control Section, phone: (615) 532-3459, fax: (615) 532-5995

DATE: 12/6/2006

| RESPONSES | WHO | OTHER DOCUMENTS |
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| <p>Since FHWA wants California to change its definition as well, we are not a good source. Tentatively, we are proposing to just use the language out of the Fed Regs.</p> | <p>Ronald W. Beals Assistant Chief Counsel Caltrans Legal 916-654-2630 (8-464-2630) 916-654-6128 (8-464-6128) FAX</p> | |
| <p>#1 We don't have a specific definition for a 'destroyed nonconforming sign'. We do address "nonconforming signs substantially damaged by wind or acts of God as follows: 002.12B3(g) A nonconforming sign which is substantially damaged by wind or acts of God shall not be repaired or re-erected until the owner has been notified by the Nebraska Department of Roads that such sign can be repaired or re-erected. 002.12B3(g)(1) After approval of the Department, nonconforming signs which are damaged by wind or acts of God may be repaired, re-erected or acquired by the State if the cost of the repair based on new construction and overhead costs are less than sixty percent of the depreciated value of the sign. Signs which are damaged sixty percent or more cannot be rebuilt and must be removed by the sign owner without compensation. 002.12B3(g)(2) The Department's personnel shall determine the percent of damage to the sign.</p> <p>#2 002.01M MAINTENANCE: The routine ordinary repairing or restoring of the sign to its as constructed condition with the same type of materials used in the original sign structure and face. Nonconforming signs must remain essentially the same as they were on the date they became nonconforming. Maintenance is permitted; however, reconstruction and modification is prohibited. The following shall constitute a substantial change to a sign and are therefore not maintenance of a sign: 002.01M1 Any change in the location of the sign. 002.01M2 Any increase in the size or dimensions of the sign. 002.01M3 The addition of a new sign face or faces.</p> | <p>Jean Todd Highway Beautification Supervisor Right-of-Way Division Nebraska Dept. of Roads 402.479.4463</p> | |

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| <p>002.01M4 Any change in the type of structural face material.</p> <p>002.01M5 The replacement of the sign supports with sign supports of a different material than material found on the sign when it became grandfathered.</p> <p>002.01M6 Covering the original sign supports with concrete, metal or wood for whatever purpose.</p> <p>002.01M7 Any replacement of poles that exceeds 25 percent per year or if less than four poles, one pole per year.</p> <p>002.01M8 An increase in the number of poles.</p> <p>002.01M9 An increase in the height of the poles.</p> <p>002.01M10 Adding or converting the sign to a variable or changeable message sign.</p> <p>002.01M11 Any addition of lighting, either attached or unattached.</p> <p>02.01M12 No modification that changes the existing lighting such that the illumination to the sign facing is substantially increased.</p> <p>002.01M13 No addition of reflective material on the sign.</p> <p>002.01M14 No modification that enhances the visibility of the sign's message or the period of time that the sign's message is visible.</p> <p>002.01M15 No addition of any other devices.</p> <p>002.01N MODIFICATION: Any addition to or any substantial change in the dimensions, lighting, structure or advertising face, except as incidental to maintenance, as defined in 002.01M. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or painted unit is a change in advertising message, not a modification.</p> <p>#3 If I understand this question correctly, the only relationship they may have is if a wind-damaged sign (as noted in question #1) is damaged less than 60%; any repairs would have to be made using the same types of materials as used on the original sign.</p> | | |
| <p>(1) Any nonconforming sign that cannot be repaired for less than 50% of the current replacement cost new of the structure.</p> <p>(2) B. To be allowed to continue as nonconforming, a sign or structure must remain substantially unchanged from its condition as of the effective date of the state law or regulations or changed condition.</p> <p>1. Replacement, extension, or enlargement of the sign or structure is a substantial change in the existing use.</p> <p>2. The change of location or height of such sign or structure is a substantial change in the existing use.</p> <p>3. A change of the message content is not a substantial change in existing use. In the event a sign has been blank for a period of 18 consecutive months, the owner will be given written notice of 120 days to display a message on or remove such sign structure. In the event a message is not displayed on the sign structure within 120 days from the postdate of the aforementioned written notice, the permit shall be cancelled.</p> <p>4. Rebuilding, or re-erecting the sign or structure, is a substantial change in existing use if such rebuilding, or re-erection expenses exceed 50% of the current replacement cost new of the entire sign or structure.</p> <p>EXCEPTION:</p> <p>If it can be demonstrated to the satisfaction of the commissioner that a nonconforming sign or structure has been vandalized or subject to other criminal or tortious act, then the replacement, rebuilding, or re-erecting of such sign or structure will not be considered a substantial change in existing use irrespective of the cost of such</p> | <p>James R. Barrett, C.P.E.S.C. Regulatory and Compliance Manager Asset Management Division Virginia DOT 6600 West Broad Street Richmond, Virginia 23230 804-662-9389 804-662-9426 FAX James.Barrett@VDOT.Virginia.gov</p> | |

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| <p>replacement; however, it will be considered a substantial change in existing use if damage to nonconforming signs or structures is caused by natural disasters, hurricanes, high winds, hail, or the like, and such damage exceeds 50% of the current replacement cost new of the entire sign or structure. In the event vandalism and an act of God combine to damage a nonconforming sign or structure, the commissioner shall determine the percentage allocated to each cause of damage before determining whether a substantial change in existing use has occurred.</p> <p>5. Normal upkeep and repair of such sign or structure on a frequent basis, to the extent that the total cost of such repairs in the 12-month period would not exceed 50% of the current replacement cost new of the entire sign or structure, is not a substantial change in existing use.</p> <p>C. In reaching a determination on the cost point in subdivisions B 4 and B 5 of this section the following will apply:</p> <ol style="list-style-type: none"> 1. The sign owner shall furnish the commissioner cost data supporting any contention that such sign or structure is not damaged more than 50% of the replacement cost new. 2. The commissioner may also utilize any other data available to him. 3. A sign or advertising structure lawfully in existence under the "Grandfather Clause" (see 24VAC30-120-160, Definitions) must conform to the criteria set out herein. 4. Certain standard maintenance practices and techniques utilized by the industry relating to how repairs are accomplished may be individually approved, in which case nonconforming rights shall not be terminated. 5. A nonconforming sign or structure that does not conform to the foregoing criteria shall constitute a substantial change in existing use thereby terminating nonconforming rights and legal status. <p>D. Once the sign owner has submitted the data per paragraph (C), the commissioner per §§ 33.1-352 and 33.1-370.2 shall make a determination whether the cost of the requested/required repairs exceeds 50% of the current replacement cost new of the entire billboard or structure. The determination shall be communicated to the sign owner and the building official of the locality. The sign owner is required to apply for a building permit from the locality before repairs can be commenced. If the commissioner's determination is objected to by the building official of the locality, for good cause shown, and submits the objection to the commissioner, copy to the sign owner, within 30 days of the building permit application by the sign owner, the commissioner per §§ 33.1-352 and 33.1-370.2 shall consider the documentation submitted by the building official and reissue a determination, which determination shall be binding upon the locality.</p> <p>(3) Any sign can be repaired provided the owner can prove the costs will be less than 50% of the current replacement cost new of the structure.</p> | | |
| <p>(1) A deteriorated or damaged nonconforming sign is a sign which needs or requires the replacement of fifty percent (50%) or more of the poles or vertical supports.</p> <p>(2) MoDOT does not define customary, regular or normal maintenance. Our criteria for Maintenance of Nonconforming sign says, Reasonable maintenance and repair of nonconforming signs is permissible however, violation of any one (1) or more of the following subsections (3)(A)-(E) of this rule disqualifies any sign from being maintained as a nonconforming sign and subjects it to removal by the commission without the payment of just compensation:</p> <p>(D) Relocation or Repair of Nonconforming Signs. Relocation of a nonconforming sign or repair of a</p> | <p>Joyce Musick Senior Outdoor Advertising Permit Specialist MoDOT 1511 Missouri Blvd., P.O. 718 Jefferson City, MO 65102 Phone 573-751-9289</p> | |

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| <p>deteriorated or damaged nonconforming sign is a new erection as of the date the relocation or repair is completed and these signs must then comply with the then effective sizing, lighting, spacing, location and permit requirements of sections 226.500-226.600, RSMo. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign voids any permit issued by the commission for the sign and the fee shall be retained by the commission.</p> <p>1. Repair of any deteriorated or damaged nonconforming sign after the date the sign becomes a nonconforming sign is prohibited. A deteriorated or damaged nonconforming sign is a sign which needs or requires the replacement of fifty percent (50%) or more of the poles or vertical supports. A nonconforming sign which has only a deteriorated or damaged face shall not constitute a deteriorated or damaged nonconforming sign but shall remain subject to section 226.580.1(4), RSMo. A nonconforming sign damaged by vandalism may be repaired without being in violation of this section. The sign owner has the burden to prove that the nonconforming sign was damaged by vandalism. Proof of vandalism can be timely reports or complaints to sheriff or proper police departments. Vandalism for purposes of this rule is the willful destruction of a nonconforming sign by a party other than the sign owner, property owner or lessor of the sign or business which is advertised on the sign. Any damage to the nonconforming sign due to carelessness or negligence of any party shall not constitute vandalism.</p> <p>2. Any movement of a sign structure shall be considered a relocation;</p> <p>(3) A deteriorated or damaged nonconforming sign that needs or requires the replacement of fifty percent (50%) or more of the poles or vertical supports, would not be allowed to be replaced. A sign requiring less than fifty percent (50%) would be considered customary maintenance.</p> | <p>Fax 573-751-8267 Joyce.Musick@modot.mo.gov</p> | |
| <p>Section 14-10.007 Maintenance of Nonconforming Signs, Florida Administrative Code, addresses both "destroyed" and "routine maintenance".</p> <p>14-10.007 Maintenance of Nonconforming Signs.</p> <p>(1) A nonconforming sign must remain substantially the same as it was as of the date it became nonconforming.</p> <p>(2) Reasonable repair and maintenance of nonconforming signs, including change of advertising message, is permitted and is not a change which would terminate the nonconforming status. Reasonable repair and maintenance means the work necessary to keep the sign structure in a state of good repair, including the replacement in kind of materials in the sign structure. Where the replacement of materials is involved, such replacement may not exceed 50% of the structural materials in the sign within any 24 month period.</p> <p>"Structural materials" are defined in Section (6)(a)2.a. below. The following are examples of modifications which do not constitute reasonable repair or maintenance, and which constitute substantial changes to a nonconforming sign that will result in the loss of nonconforming status:</p> <p>(a) Modification that changes the structure of, or the type of structure of, the sign, such as conversion of a back-to-back sign to a V-type, or conversion of a wooden sign structure to a metal structure;</p> <p>1. The Department will authorize structural alterations to a nonconforming sign in instances where the Occupational Safety and Health Administration (OSHA) requirements or other safety related requirements necessitate alterations, provided that the reconstruction shall not be authorized primarily for the purpose of replacement of deteriorated materials. The Department will accept a notice or other writing from OSHA to the permittee requiring the intended alteration as documentation of safety requirements. If the structural</p> | <p>juanice.hagan@dot.state.fl.us</p> | |

alterations are intended to be made to comply with OSHA regulations, the permittee must submit to the Department a statement in writing citing the OSHA regulation with which it is intending to comply and explaining how the intended alteration is required by the cited OSHA regulation. Structural alterations are allowed only if no alternatives are available which address safety requirements. Documentation of the requirements must be submitted to, and approved by, the Department prior to making any structural alterations. The location, structural configuration, number of faces, size of the sign faces, sign structure height, and the materials used in the sign structure and sign faces must be the same type as those used in the sign prior to approval of the alterations. During the period of temporary removal for those approved structural alterations, the permittee must permanently display the permit tag at the sign location.

2. The addition of a catwalk or other fall protection device for safety reasons, where the device does not increase the structural integrity of the sign or prolong the life of the sign, is allowed without obtaining prior approval from the Department;

(b) Modification that changes the area of the sign facing or the HAGL of the sign, however:

1. Reduction in the area of the sign facing or the HAGL of the sign, which reduction is required by an ordinance adopted by a local governmental entity with jurisdiction over the sign, is not a change which would terminate the nonconforming status of the sign, provided like materials are used and no enhancements are made to the visibility of the sign.

2. Embellishments may be added to nonconforming signs subject to the limitations regarding size of sign facing, and provided they do not exceed 10% of the area of the sign facing prior to the addition of the embellishment;

(c) Modification that enhances the visibility of the sign's message, or the period of time that the sign's message is visible;

(d) Modification that adds automatic changeable faces; or

(e) Modification that adds artificial lighting, or changes the existing lighting such that the illumination to the sign facing is substantially increased.

(3) Prohibited modifications need not be physically part of the sign if they have the effect of enhancing the sign's message, the visibility of the message, or the period of time that the message is visible. However, in such cases, the modifications will not be considered a modification to the sign if:

(a) The modification is the result of removal, cutting, or trimming of vegetation in front of the sign pursuant to a permit for such removal, cutting, or trimming from the Department; or

(b) The modification only incidentally affects the visibility of the sign's message, and the bona fide purpose of the modification is unrelated to the sign.

(4) A nonconforming sign may not be disassembled and re-erected at the same location except as provided in (6)(a), below.


(5) A nonconforming sign may not be relocated, except to a conforming location.

(6) A nonconforming sign may continue to exist so long as it is not destroyed, abandoned, or discontinued.

"Destroyed," "abandoned," and "discontinued" have the following meanings:

(a) "Destroyed" means more than 50% of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would call for, in the case of wooden sign structures, replacement of the broken supports and, in the case of a metal sign structure, replacement of at least 25% of

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| <p>the length above ground of each broken, bent, or twisted support. A sign will not be considered "destroyed" within the meaning of this section under the following conditions:</p> <ol style="list-style-type: none"> 1. The destruction of a sign caused by vandalism or other criminal or tortious act. 2. If the permittee demonstrates that the replacement materials cost to re-erect the sign would not exceed 50% of the value of the structural materials in the sign, immediately prior to destruction. The following shall be applicable in determining whether the replacement materials cost to re-erect the sign would not exceed 50% of the value of the structural materials in the sign: <ol style="list-style-type: none"> a. Structural materials are all those materials incorporated into the sign as load-bearing parts, including vertical supports, horizontal stringers, braces, bracing wires, brackets, and catwalks. Structural materials do not include the sign face, any skirt, any electrical service, or electric lighting, except in cases where such items have been incorporated into the sign as load-bearing parts. b. The value of the structural materials in the sign immediately prior to destruction shall be based on the cost of all structural materials contained in the sign as it was configured just prior to damage, and the cost of such materials shall be based on normal market cost as if purchased new on or about the date of destruction, without regard to any labor costs or special market conditions. c. The materials to be included in the replacement materials costs to re-erect the sign shall be all materials that would be used to return the sign to its configuration immediately prior to destruction, and shall include any material obtained from a source other than the sign itself, whether used, recycled, or repaired, but shall not include any material from the sign itself that is repaired on-site. The repairs to the sign shall be with like materials, both in type and size, and shall be those reasonably necessary to permanently repair the sign in a manner normally accomplished by the industry in that area. The cost of such materials shall be as described in paragraph (6)(a)2.b. <p>(b) A nonconforming sign is "abandoned" or "discontinued" when the sign owner fails to operate and maintain the sign for a period of 12 months or longer. Signs displaying bona fide public interest messages are not "abandoned" or "discontinued" within the meaning of this section. The following conditions shall be considered failure to operate and maintain the sign:</p> <ol style="list-style-type: none"> 1. Signs displaying only an "available for lease" or similar message, 2. Signs displaying advertising for a product or service which is no longer available, 3. Signs which are blank or do not identify a particular product, service, or facility. | | |
| <p>(1) Neither the Ohio Revised Code or the Ohio Administrative Code state a definition for a destroyed nonconforming sign. However, OAC 5501:2-2-06(D) states the following:</p> <ol style="list-style-type: none"> (1) When a nonconforming advertising device is damaged by more than seventy percent of its replacement value immediately prior to the damaging incident, the device will be considered destroyed. This does not apply to advertising devices damaged by vandalism, other criminal or tortuous acts or weather-related causes, upon satisfactory evidence submitted by ODOT. (2) An advertising device which has depreciation of more than seventy percent of its replacement value due to lack of maintenance is considered to be abandoned or discontinued. (3) An advertising device which ceases to display advertising matter or displays obsolete advertising matter longer than one year is considered to be abandoned or discontinued. (4) An "available for lease" or similar message that concerns the availability of the sign itself shall be treated as abandoned or discontinued after expiration of one year. | <p>Kerry.Yoakum@dot.state.oh.us</p> | |

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| <p>(5) A sign whose message had been partially obliterated by the owner so as not to identify a particular product, service or facility is considered to be abandoned or discontinued after expiration of one year.</p> <p>(2) OAC 5501:2-2-01(S) states: "Normal maintenance (nonconforming devices)" means that which is customary to keep a sign in ordinary repair, upkeep or refurbishing.</p> <p>In addition, 5501:2-2-06(B) states the following: A nonconforming advertising device, including its structure, may receive normal maintenance and repair. The following is considered to be normal maintenance and repair:</p> <p>(1) The in kind replacement of a wood or metal component with a like component. (2) The painting of supports and frames. (3) The replacement of torn or destroyed face panels with in kind panels. (4) The changing of copy.</p> <p>(3) A destroyed nonconforming sign can no longer receive customary maintenance.</p> | | |
| | Marian Patton Traffic Services Outdoor Advertising Manager 225-935-0156 MarianPatton@dotd.la.gov |  LA 137.doc |
| <p>(1) We do not have a definition for a destroyed sign in our regulations. However, our policy we use states that if more than 50% of the structure needs replacing, we would require that they apply for a new permit.</p> <p>(2) Answer - Changing the face or message is allowed. We also allow for repairs to be made to less than 50% of the structure. That is only if the repairs are made with "like" materials. For example a wood pole may only be replaced by another wood pole and not a metal one. However, we do not allow for the size of the sign to increase or for lights to be added. We also do not allow for the sign to be raised or lowered.</p> <p>(3) Answer - N/A</p> | Brandy Campbell Beautification Coordinator Arkansas Highway and Transportation Dept. Environmental Division * Beautification Office: 501-569-2088 * Fax: 501-569-2089 Cell: 501-412-1588 Brandy.Campbell@ArkansasHighways.com | |
| <p>1) Define a destroyed non-conforming sign ... a destroyed non-conform that has substantial damage of 50-60% or more, either completely down by known or unknown, natural and unnatural disasters. A lawfull erected sign that does not comply with the provisions of a law or rule promulgated at a later date, or which later fails to comply with a law or rule due to changed conditions. See Texas Administrative Code (TAC) 21.143.</p> <p>2) Allowable customary mnt on a non-conforming sign ... ANY replacement of nuts and bolts, nailing, welding or riveting, cleaning and painting, and manipulation to level and plumb the sign structure. Replacement of parts, as long as the basic design of the sign in not altered and materials of same type are used. Changing the advertisement msg, including changing the sign face, as long as similar materials are used</p> | Steven Taylor Texas DOT Right of Way Division Property Management Section HBA Program South Orient Railroad 118 E Riverside Drive Austin, Texas 78704 | Below is webpage for TAC ... http://info.sos.state.tx.us/pls/pub/readtac.c\$ext.ViewTAC?tac_view=5&ti=43&pt=1&ch=21&sch=l&r=Y |

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| <p>to replace sign face.</p> <p>3) What if any relationship to destroyed non-conforming signs have w/how you administer customary mnt ... These are 2 separate issues. A destroyed sign would need to be completely removed and no new permit issued due to the location is no longer legal and/or in accordance to current rules and law. Mnt on a non-conforming sign is no different from mnt on a conforming sign. Mnt is allowed w/out requiring a new permit as long as the mnt doesnt exceed what is allowed in TAC 21.143.</p> | <p>512.416.2895 Office 512.416.2909 Fax staylo2@dot.state.tx.us</p> | |
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