

1. Report No. FHWA/TX-88+1191-2F	2. Government Accession No.	3. Recipient's Catalog No.	
4. Title and Subtitle Uses of Highway Rights-of-Way By Roadside Businesses and Itinerant Merchants		5. Report Date November, 1988	6. Performing Organization Code
		8. Performing Organization Report No. Research Report 1191-2F	
7. Author(s) Jack T. Lamkin, Jr., Rodger Koppa, Tom Creasy, Dock Burke, David Finley, Charles Viktorin		10. Work Unit No.	
9. Performing Organization Name and Address Texas Transportation Institute The Texas A&M University System College Station, TX 77843		11. Contract or Grant No. Study No. 2-15-88-1191	
		13. Type of Report and Period Covered September, 1987 Final - November 1988	
12. Sponsoring Agency Name and Address Texas State Department of Highways and Public Transportation Transportation Planning Division P.O. Box 5051, Austin, TX 78763		14. Sponsoring Agency Code	
		15. Supplementary Notes Research performed in cooperation with DOT, FHWA Research Study Title: Use of Highways Rights-of-Way by Roadside Businesses and Intinerent Merchants	
16. Abstract <p>This report documents the extent of use of Texas State Department of Highways and Public Transportation (SDHPT) rights-of-way by roadside businesses. It documents many aspects of this use such as safety, right-of-way damage, products sold, and locational considerations. It presents information concerning Texas statutes in this area as well as legislation and regulation of other states relating to the use of highway rights-of-way.</p> <p>Information developed from a survey of Texas Department of Public Safety (DPS) Officers regarding their experiences with roadside businesses is presented. The results of a survey of SDHPT Districts is included in this report. The finding of on-site visits and interviews at vendor locations are presented.</p> <p>An array of alternatives to deal with some of the problems created by roadside businesses is included in the report. There is a discussion of the attributes of the various alternatives. The alternatives presented range from do nothing to legislative remedies.</p>			
17. Key Words Roadside Vendors, Itinerant Merchants, Roadside Businesses, Use of Rights-of- Way		18. Distribution Statement No restrictions. This document is available to the public through the National Technical Information Service 5285 Port Royal Road Springfield, Virginia 22161	
19. Security Classif. (of this report) Unclassified	20. Security Classif. (of this page) Unclassified	21. No. of Pages 76	22. Price



**USE OF HIGHWAY RIGHTS-OF-WAY  
BY  
ROADSIDE BUSINESSES AND ITINERANT MERCHANTS**

by

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Research Report 1191-2F  
Research Study Number 2-15-88-1191  
Use of Highway Rights-of-Way by Roadside Businesses  
and Itinerant Merchants

Sponsored by

Texas State Department of Highways  
and Public Transportation

in Cooperation with

U.S. Department of Transportation  
Federal Highway Administration

Texas Transportation Institute  
The Texas A&M University System  
College Station, TX 77843

November 1988



# METRIC (SI\*) CONVERSION FACTORS

## APPROXIMATE CONVERSIONS TO SI UNITS

Symbol	When You Know	Multiply By	To Find	Symbol
<b>LENGTH</b>				
in	inches	2.54	millimetres	mm
ft	feet	0.3048	metres	m
yd	yards	0.914	metres	m
mi	miles	1.61	kilometres	km

<b>AREA</b>				
in <sup>2</sup>	square inches	645.2	millimetres squared	mm <sup>2</sup>
ft <sup>2</sup>	square feet	0.0929	metres squared	m <sup>2</sup>
yd <sup>2</sup>	square yards	0.836	metres squared	m <sup>2</sup>
mi <sup>2</sup>	square miles	2.59	kilometres squared	km <sup>2</sup>
ac	acres	0.395	hectares	ha

<b>MASS (weight)</b>				
oz	ounces	28.35	grams	g
lb	pounds	0.454	kilograms	kg
T	short tons (2000 lb)	0.907	megagrams	Mg

<b>VOLUME</b>				
fl oz	fluid ounces	29.57	millilitres	mL
gal	gallons	3.785	litres	L
ft <sup>3</sup>	cubic feet	0.0328	metres cubed	m <sup>3</sup>
yd <sup>3</sup>	cubic yards	0.0765	metres cubed	m <sup>3</sup>

NOTE: Volumes greater than 1000 L shall be shown in m<sup>3</sup>.

<b>TEMPERATURE (exact)</b>				
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

## APPROXIMATE CONVERSIONS TO SI UNITS

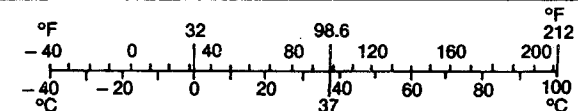
Symbol	When You Know	Multiply By	To Find	Symbol
<b>LENGTH</b>				
mm	millimetres	0.039	inches	in
m	metres	3.28	feet	ft
m	metres	1.09	yards	yd
km	kilometres	0.621	miles	mi

<b>AREA</b>				
mm <sup>2</sup>	millimetres squared	0.0016	square inches	in <sup>2</sup>
m <sup>2</sup>	metres squared	10.764	square feet	ft <sup>2</sup>
km <sup>2</sup>	kilometres squared	0.39	square miles	mi <sup>2</sup>
ha	hectares (10 000 m <sup>2</sup> )	2.53	acres	ac

<b>MASS (weight)</b>				
g	grams	0.0353	ounces	oz
kg	kilograms	2.205	pounds	lb
Mg	megagrams (1 000 kg)	1.103	short tons	T

<b>VOLUME</b>				
mL	millilitres	0.034	fluid ounces	fl oz
L	litres	0.264	gallons	gal
m <sup>3</sup>	metres cubed	35.315	cubic feet	ft <sup>3</sup>
m <sup>3</sup>	metres cubed	1.308	cubic yards	yd <sup>3</sup>

<b>TEMPERATURE (exact)</b>				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



These factors conform to the requirement of FHWA Order 5190.1A.

\* SI is the symbol for the International System of Measurements



## **Acknowledgement**

The authors express their appreciation to the Texas State Department of Highways and Public Transportation, and the Federal Highway Administration, sponsors of this study. Mr. Max Fariss, SDHPT Right-of-Way Division served as Technical Contact and provided invaluable assistance and support to the project staff. Mr. Robert Shaddock, General Counsel, SDHPT provided information regarding the various legal and statutory aspects of this issue.

The information provided by the several states concerning their experience with this problem and the laws and regulations they have adopted were most useful to the staff.

The Texas Department of Public Safety was most cooperative in this effort. Members of the DPS completed a questionnaire regarding their experience with roadside businesses and provided information on safety and enforcement aspects of this issue.

Finally, SDHPT personnel provides information regarding their experiences with roadside businesses. This survey, which covered all 254 counties in Texas, proved to be a valuable resource. These surveys were completed by individuals that deal on a daily basis with issues addressed in this study. The survey, or more appropriately a census, furnished a global view for the first time on the extent of roadside businesses operating within the highway rights-of-way.

Ms. Barbara Lorenz deserves a special thanks for her time and patience in preparing this report.

## **Disclaimer**

The material presented in this paper was assembled during a research project sponsored by the Texas State Department of Highways and Public Transportation and the Federal Highway Administration. The views, interpretations, analyses and conclusions expressed or implied in this report are those of the authors. They do not represent a standard, policy or recommend practice established by the sponsors.



## **Abstract**

This report documents the extent of use of Texas State Department of Highways and Public Transportation (SDHPT) rights-of-way by roadside businesses. It documents many aspects of this use such as safety, right-of-way damage, products sold, and locational considerations. It presents information concerning Texas statutes in this area as well as legislation and regulation of other states relating to the use of highway rights-of-way.

Information developed from a survey of Texas Department of Public Safety (DPS) Officers regarding their experiences with roadside businesses is presented. The results of a survey of SDHPT Districts is included in the report. The finding of on-site visits and interviews at vendor locations are presented.

An array of alternatives to deal with some of the problems created by roadside businesses is included in the report. There is a discussion of the attributes of the various alternatives. The alternatives presented range from do nothing to legislative remedies.

## Summary

For many years Texas motorists have availed themselves of the opportunity to purchase fresh farm products from fruit and vegetable stands along the highway. These businesses were usually operated by the producer and were seasonal in nature. During the past few years, the nature of roadside businesses has changed, and they have become more pervasive along the highway. This report documents the findings of a study of highway rights-of-way use by these businesses, the extent of their operations, problems created by the vendors, and remedies available to SDHPT to alleviate these problems.

A review of existing legal prohibitions to the use of state ROW for vending indicated that current remedies exist. But, they are not fully enforced, or their enforcement is cumbersome, lengthy, and not necessarily effective. Information about the experiences and procedures of other states with this problem was developed. Other states indicated that many of their concerns paralleled those of SDHPT.

The results of a survey of SDHPT district maintenance supervisors indicated that there are over 2,300 sites along Texas highways where these businesses locate. They sell a wide range of merchandise. Importantly, 75 percent of the vendors are selling commercial items as opposed to homemade or home grown. While these businesses are found in all parts of Texas, they are especially prevalent in urban counties. On the average, there are six times as many roadside businesses using the rights-of-way in urban counties as in rural counties. Right-of-way problems caused by these businesses and their customers include litter, vegetation and soil damage, pavement and shoulder damage and safety. SDHPT spends 72,000 man hours per year at a total cost of \$1.6 million to repair and correct these and other problems created at these locations. In addition to these problems, SDHPT reported receiving complaints regarding these businesses from various sources, including other businesses, property owners, motorists, and the general public.

The results of a survey of DPS officers indicated that these businesses create a safety problem. However, enforcement is not a high priority item. Even in "No Parking" areas, only 25% of the DPS respondents indicated that they issue a citation. Motorist distraction and visual clutter caused by these businesses create safety problems. The location of these businesses along high traffic volume highways in urban areas serves only to intensify the safety problem.

On-site visits to and interviews at 100 of these vendor locations confirmed many of the problems reported by SDHPT. At many of the sites visited, the businesses were highly commercialized. The factors the operator consider in selecting a site are the same ones that firms in general use in making allocation decision. Only three percent of the responses indicated that a specific site was selected because it was near the operators home -- suggesting that concept of vendor selling home produced items is no longer valid.

The report discusses several alternatives for SDHPT consideration in dealing with this problem.

**Do Nothing** - Probably acceptable at this time, since the problem is not a major issue yet. However, SDHPT remains legally at risk for misfortunes that might be causally related to the operation or location of these vendor sites.

**Increased Law Enforcement** - Enforcement emphasis within the DPS would be needed. Local courts need to be made aware of any increased priority being placed on these violations.

**Permit or Licenses** - As an added administrative burden, SDHPT could implement a ROW leasing policy for these vendors. Such a policy would institutionalize the practice and needs, therefore, to be carefully considered.

**Use of Existing Controls** - Extant laws controlling sale of automobiles in the ROW would, if enforced, eliminate the most significant safety hazard - use of ROW to display automobiles for sale.

**State Agencies and Local Jurisdictions** - Administration arrangements between SDHPT and other agencies/jurisdictions may be possible to reduce manifold the magnitude of the vendor in ROW problem.

**Legislative** - If pursued as legislation, key differences in rural vs. urban impacts will need to be recognized. Also, sale of home grown/homemade products vs. commercial items will be important. Finally, illegal use of ROW is now a civil violation, and future legislation might make such violations subject to criminal codes as well.

## **Implementation Statement**

The findings of this investigation suggest that the operations of businesses within highway rights-of-way is a widespread practice throughout Texas. There are strong indications that the vast majority of these businesses are commercialized and not outlets for home produced items. There is evidence that these operations present serious problems and concerns to SDHPT, motorist and DPS. An array of alternatives to manage these problems is presented for SDHPT consideration.

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# Use of Highway Rights-of-Way by Roadside Businesses and Itinerant Merchants

## 1.0 Introduction

### 1.1 Background

For many years Texas motorists have availed themselves of the opportunity to purchase fresh farm products from fruit and vegetable stands along the highway. These merchants who are usually the producer or a family member, tend to be a short lived operator. When the production season ends they relinquish their location within the rights-of-way. This type operation provides a convenient method for producers to dispose of excess production, a source of income, and fresh fruits and vegetables to motorists.

Over the past several years, a new type of roadside merchant operation has developed. In contrast to the seasonal nature of the produce vendor, these have taken on a degree of permanency. Typically, these merchants set up their operations on an almost daily basis at the same location. Signs are placed, near the roadway, up stream of these locations to alert motorists. Portable barbecue equipment and vans containing iced shrimp are brought to these locations for sale to the public. The selection of these sites is made by the merchant with little, if any, concern for safety, parking, traffic operations, pavement damage or litter control. Their major concern is traffic volume and the high exposure associated with these locations. Unfortunately, roadside operations at high traffic volume sites may exacerbate problems of safety, pavement damage, etc.

At present the State Department of Highways and Public Transportation (SDHPT) has limited recourse in dealing with itinerant merchants located and doing business within highway rights-of-way. While characterized as itinerant, many of these activities are conducted on a permanent or quasi-permanent basis. These merchants offer a broad range of products to the traveling public. It is not unusual for a motorist to have the opportunity to purchase shrimp, barbecue, fudge, flowers and plants, balloons, stuffed pillows, farm products used cars, etc. on the highway rights-of-way when traveling throughout the State. Signs advertising these activities are prevalent and at times are placed on the pavement edge, very close to the travel lane.

Operating a business within the highway rights-of-way may not be in the best interest of the SDHPT, the traveling public, or the even merchant. Issues of highway maintenance, operations, and safety are integral to the entire question of doing business within the rights-of-way. Pavement and vegetation are subject to damage, litter problems can increase, traffic flow may be hindered and the potential or risks of accidents probably increases at the locations selected by these roadside businesses. A secondary issue is that these merchants are using State property rent free, thereby reducing their costs when compared to competing firms operating off the rights-of-way.

The SDHPT, which is charged with management and maintenance of the highway system and adjacent rights-of-way, recognizes that these businesses are conducted on property under its responsibility. It is also aware of highway damage, traffic safety, and liability issues resulting from these operations. There are, however, no easy or consistent statewide enforcement mechanisms to prohibit, control, limit or permit these activities.

## 1.2 Study Objectives

There are three primary objectives of this study:

- (1) Identify type and extent of problems encountered by SDHPT due to the operations of itinerant merchants within the highway rights-of-way.
- (2) Identify safety implications resulting from these operations.
- (3) Develop an array of alternatives suitable for dealing with problems arising from roadside business operations.

## 1.3 Related Research

A computerized "key word" search of several data bases on the subject of businesses operating within the highway rights-of-way revealed a void of research in this area. Therefore, documentation of these activities, and methods, if any, adopted by other states in dealing successfully with merchants operating within the rights-of-way are not readily available.

The extent that business activities are operated within the rights-of-way of the Texas highway system is not known, nor is there documentation of the perceived detrimental effects. Conventional wisdom suggests that most of these activities are conducted near major cities; however, it is not unusual for the casual observer to find itinerant merchants

doing business along virtually every highway in Texas.

#### 1.4 Study Approach

Since the literature review failed to identify any previous research on this topic and since many, if not all, of the perceived problems associated with roadside business are predicated on conventional wisdom, the study team decided that hard information was needed from jurisdictions, agencies, and individuals managing these activities on a daily basis. To meet this requirement, information and data were secured from other states, Texas cities, SDHPT personnel, Texas Department of Public Safety (DPS) officers, and on site visits to active roadside business locations. To develop this type data, a questionnaire was sent to:

- (1) Each state highway agency,
- (2) DPS Sergeant Regions, and
- (3) SDHPT Districts to be completed at the county level.

Major cities in Texas were contacted and solicited for copies of ordinances relating to vendor activity in their jurisdictions.

#### 1.5 Report Organization

The report is organized into eight sections. Section 2.0 discusses the statutory and regulatory aspects of the problem and presents information on Texas laws and regulations as well as those of other states. Section 3.0 provides information regarding the magnitude of the problem in Texas and data on the impact of these operations on highway rights-of-way. Highway safety issues and implications are presented in Section 4.0. Section 5.0 presents the findings of on-site visits. A discussion of non-highway issues, the involvement of sister agencies, and a summary of city ordinances is presented in Section 6.0. Section 7.0 presents an array of alternatives available for SDHPT consideration in managing problems associated with roadside businesses.



## 2.0 Statutory and Regulatory Aspects

### 2.1 Texas Laws and Regulations

To determine the current legal status of roadside businesses and itinerant merchants and to identify laws and regulations relating to their activities, it was necessary to examine existing Texas Statutes. An extensive library search was conducted in the legal section of during November and December 1987. Additional information was requested and received from the General Counsel, SDHPT. Although laws specifically addressing roadside businesses were not found, other legislation implied prohibition of right-of-way use for this practice. Included in this legislation were laws forbidding other acts associated with roadside operation, such as parking, displaying and erecting signs on a right-of-way. Table 2.1 presents a summary of the laws and regulations in Texas which are apply to certain aspects of businesses operating on SDHPT rights-of-way. It should be noted that most of these are accompanied by civil penalties. The following sections address several important aspects of right-of-way use by businesses.

#### 2.1.1 Parking and Displaying

Parking on the ROW is addressed in three articles of legislation. Texas Revised Civil Statutes 6701d Section 94 states

"Any commissioned member of the Department of Public Safety is hereby authorized to remove any vehicle parked or standing in or on any portion of highway when, in the opinion of the said member of the Department of Public Safety, the said vehicle constitutes a hazard, or interferes with a normal function of a governmental agency".

Thus, the Department of Public Safety has the right to remove vehicles, including vendor's vehicles, from the ROW. Using the right-of-way for displaying a motor vehicle for sale is specifically prohibited in the Model Traffic Ordinance Section 14-4. It states,

"No person shall park a vehicle upon any roadway for the principal purpose of:

- Displaying such vehicle for sale.
- Washing, greasing or repairing such vehicle except repairs necessitated by an emergency."

Prohibition against automobile dealers using SDHPT right-of-way for vehicle display purposes is very specific in Texas Revised Civil Statutes 6686 and 23 TAC § 17.69. Dealers

found to be in violation are subject to the cancellation of their licenses.

Finally, fireworks stands are regulated by the Texas Insurance Code 5.43-4 and 28 TAC § 27.417 which declares, "All retail sites must furnish parking off the highway."

### 2.1.2 Signs

The question of erecting signs on the right-of-way is explained by the Texas Manual On Uniform Traffic Control Devices (2A-3), "Any unauthorized sign placed on the right-of-way by a private organization or individual constitutes a public nuisance. All unofficial signs should be removed." Only the State Department of Highways and Public Transportation is authorized to place signs

"prohibiting or restricting the stopping, standing or parking of vehicles on any highway or where in the opinion of the State Highway Engineer-Director, such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon" (Texas Revised Civil Statutes 6701d Section 96).

If an unauthorized sign is encountered, who has the legal right to remove it? Obviously the SDHPT can, however DPS troopers have the authority as well. It stems from Texas Revised Civil Statutes 6701d Section 36 which states

"Any commissioned member of the Department of Public Safety is hereby authorized to remove any vehicle parked or standing in or on any portion of a highway when, in the opinion of the said member of the Department of Public Safety, the said vehicle constitutes a hazard...".

In addition, this law declares signs which interfere with the effectiveness of an official traffic control device are hazardous and should be removed.

### 2.1.3 Leasing Legislation

Right-of-Way leasing legislation was non-existent until Chapter 757 in Acts of the 70th Legislature. Passed in 1987, this act allows the SDHPT to lease

"any part of the right-of-way for, or the airspace above or underground space below, a highway that is a part of the state highway system if the department has determined that the area to be leased will not be needed for highway purposes during the period of time of the lease."

#### 2.1.4 Type of Penalty

Of the fourteen different articles of legislation, violation is considered a criminal offense in only one (Texas Penal Code Section 42.03). This law deems it a criminal offense if a person intentionally

"obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his act and the acts of others."

In other words, any obstruction of the ROW or highway due to a vendor, or his customers parked along the highway, is a class B misdemeanor. Other laws listed in this report or civil in nature.

#### 2.1.5 Unauthorized Use

"No person shall entrust state property to any state official or employee or to anyone else to be used for other than state purposes." [Article V Section 85 S.B. 1, Acts 1987, 70th Legislature, Called Session]. This prohibition appears to charge the SDHPT to maintain the integrity of the highway right-of-way.

### 2.2 Laws of Other States

This section presents the findings of a survey of state highway agencies regarding their authority and procedures in managing the use of highway rights-of-way by roadside businesses. Complete documentation of this survey is found in Research Report 191-1 "Survey of States Relative to use of Highway Rights-of-Way for Business Purposes".

A questionnaire was mailed to each state requesting information on unauthorized use of the highway right-of-way. Forty-five states responded to questions asked in four subject areas:

- (1) the extent, if any, of unauthorized use in right-of-way;
- (2) authorized use of right-of-way;
- (3) different methods used to deal with this problem; and
- (4) what type of offense (civil or criminal) is a violation and what agency(ies) is responsible for enforcement.

Table 2.1: Summary of Related Legislation, Texas

LAW	APPLICATION						PENALTIES		Remarks	
	Parking P	Signs S	Tress- pass T	Leasing L	Obstruction of ROW O	Distance from Highway D	Right to Remove R	Civil C		Criminal CR
Texas Rev Civil Statutes 6701d Section 36	X							X		Signs which interfere with the effectiveness of an official traffic control device should be removed
Section 94	X							X		Gives DPS official the right to remove any vehicle which is considered to be a hazard
Section 96		X						X		The SDHPT may place signs prohibiting stopping, standing or parking where the State Highway Engineer deem necessary
Texas Ins Code Annotated ant. 543-4								X		Gives legal authority to state board of insurance to promulgate rules to be administered by State Fire Marshall
28 TAC 27.417	X							X		All firework stands must furnish parking off the highway
28 TAC 27.424								X		Gives distance from highway firework stands must operate from
Texas Penal Code Section 42.03					X				X	Addresses obstruction of a highway or street and make is a Class B misdemeanor
Article V Sec 85 S.B. 1										Prohibits entrusting state property to anyone for other than state purposes
Chap 757 Acts of 70th Legislature				X				X		This bill gave SDHPT the right of lease out highway right-of-way
43 T.A.C. Sect 21.148		X						X		Prohibits erecting signs resembling official traffic signs or signal devices
TX Revised Civil Statutes ART 6666								X		Confers broad rule-making authority of the commission to control and promulgate rules on the right-of-way
TMUTCD 2A-3		X				X		X		Any unauthorized sign placed by someone not having jurisdiction is a nuisance and should be removed
23 TAC Sect. III				X				X		The state will not permit automotive service stations or other commercial establishments to be located on the rights-of-way of the interstate system
MTO Sect. 14-4	X							X		No person shall park any vehicle upon any roadway for the principle purpose of displaying such vehicle for sale
Tex Rev. Civ. Stat. 6686 23 TAC 19.69	X							X		Prohibits automobile dealers from using right-of-way for vehicle display. Subject to cancellation of dealers licenses

7



A copy of the questionnaire is found in the Appendix. The data are summarized on Table 2.2.

### 2.2.1 Extent and Severity of ROW Use

To determine the extent and severity of unauthorized use by roadside vendors, the following questions were asked:

**Do vendors use highway ROW in your state for business purposes?**

- a. yes with authorization**
- b. yes without authorization**
- c. no**

Thirty-seven (82%) of the states acknowledged some form of vendor right-of-way use. Out of the thirty-seven, twenty five were without authorization and twelve were with some form of lease or permit legislation. Eight states indicated that no unauthorized ROW use occurred (Table 2.2).

**Do vendors on ROW cause problems for you in these categories?**

- a. operational problems**
- b. maintenance problems**
- c. safety problems**

Operational problems were named in twenty (44%) of the responses. Twenty states responded that vendors caused maintenance problems, and twenty five (56%) stated that safety problems were caused by roadside vending. Fifty-eight percent of the state responses indicated some type of problem experienced with roadside vendors. (Table 2.2).

The extent of the responses of the two previous questions indicates that this problem is not limited to a few states. In fact, this vendor activity appears to be more widespread and hazardous than expected.

### 2.2.2. Methods Used to Regulate ROW Use

To learn existing methods of dealing with this problem, the following question was asked:

**Is vendor use of ROW sanctioned?**

- a. yes by state law**
- b. yes by departmental policy**
- c. no**

State law allows some form of vending in seventeen states. Nine of these states allow ROW use only for blind service organizations of blind persons as specified in the Randolph-Sheppard Act. The eight other states have different forms of legislation for ROW use (Table 2.2). The eight different forms of authorized ROW use are listed below by their respective states:

- California - California uses a joint venture system between the state and private industries for vending along certain portions of the state ROW.
- Florida - Although ROW vending is discouraged, Florida permits the temporary commercial leasing of rights-of-way that are not presently needed for road or highway purposes.
- Illinois - Illinois leases the ROW in areas where it is not required for the safe and proper operation and maintenance of the highway facility. Any individual, company, organization, or public or quasi-public agency may submit a lease application to the District Engineer having supervision over State highways in the county where the site is located.
- Kentucky - Kentucky law allows permitting for the use of the ROW; however, the state is currently experiencing an enforcement problem with existing regulations.
- Maryland - Maryland allows "mobile seafood vendors" to use the ROW for business purposes.
- Minnesota - Minnesota leases unneeded ROW space to anyone approved by the Commissioner of Transportation.
- Nevada - Nevada will lease ROW space to any individual or group, provided the location is not a safety hazard.
- New Mexico - New Mexico issues permits for vendors to use the ROW.

### 2.2.3 States' Current Legislation

The following question was asked to determine what type of penalties were legislated in the states:

**Is unauthorized use of ROW subject to:**

- a. civil penalty?**
- b. criminal penalty?**

Unauthorized ROW use is subject to civil penalty in thirty one states. In twenty one states it is a criminal penalty. Twelve states have both civil and criminal statutes addressing violators. (It is possible for a state to have both civil and criminal statutes dealing with violations.) Designated enforcement agencies are listed by state in Table 2.2 chart.

TABLE 2.2. SUMMARY OF STATE SURVEY

STATE	ROW USAGE		TYPE OF OFFENSE		ENFORCED BY		
	NOT AUTHORIZED	AUTHORIZED Use by Blind Service Organizations	Civil	Criminal	Highway Agency	State/Local Police Agency	State/Local Attorney General
Alabama	X		X			X	
Alaska	X		X			X	X
Arizona		X	X	X			X
Arkansas		X	X	X			X
California			X	X		X	X
Colorado	X			X		X	X
Connecticut	X		X			X	
Delaware	X		X			X	X
Florida				X		X	
Georgia	X			X	X	X	
Idaho		X	X		X		
Illinois			X	X	X	X	X
Indiana	X		X			X	
Iowa	X		X	X	X		

STATE	ROW USAGE		TYPE OF OFFENSE		ENFORCED BY		
	NOT AUTHORIZED	AUTHORIZED	Civil	Criminal	Highway Agency	State/Local Police Agency	State/Local Attorney General
		Use by Blind Service Organizations	Private Use				
Kansas	X		X			X	
Kentucky	X		X issues	X	X		
Louisiana	X		X		X		
Maine	X		X				X
Maryland			X seafood vendors	X		X	
Massachusetts	X			X	X	X	X
Michigan	X		X			X	
Minnesota			X leases ROW	X			X
Mississippi	X			X	X	X	
Missouri		X		X		X	
Montana	X		X	X	X		X
Nebraska	X		X		X		
Nevada			X leases ROW	X	X		
New Hampshire		X		X	X		X
New Jersey	X			X		X	

STATE	ROW USAGE				TYPE OF OFFENSE		ENFORCED BY		
	NOT AUTHORIZED	AUTHORIZED		Civil	Criminal	Highway Agency	State/Local Police Agency	State/Local Attorney General	
		Use by Blind Service Organizations	Private Use						
New Mexico			X leases		X			X	
New York	X			X				X	
North Carolina		X		X	X			X	
North Dakota	X				X			X	
Oklahoma		X		X				X	
Oregon	X			X	X			X	
Pennsylvania	X			X	X	X		X	
South Carolina	X				X			X	
South Dakota	X			X	X			X	
Texas		X		X		X		X	
Utah	X				X			X	
Vermont	X			X				X	
Virginia	X			X	X			X	
Washington		X		X		X			
West Virginia	X			X	X	X		X	

STATE	ROW USAGE		TYPE OF OFFENSE		ENFORCED BY		
	NOT AUTHORIZED	AUTHORIZED Use by Blind Service Organizations	Private Use	Civil	Criminal	Highway Agency	State/Local Police Agency
Wyoming	X			X			X





### 3.0 Impact of Roadside Businesses on Highway Rights-of-Way

#### 3.1 Introduction

To identify impacts of roadside businesses on SDHPT operations, a questionnaire was prepared and distributed to each District Headquarters (see the Appendix for copy of questionnaire). In the transmittal letter, the District Engineers were asked to provide information for each county. A total of 280 questionnaires covering all 254 counties in the State were completed and returned (some counties have more than on maintenance section). Most of the questionnaires were completed by roadway foremen who are confronted on a daily basis with problems resulting from businesses operating in the right-of-way. The information reported were collected by SDHPT during February and March 1988.

The questionnaire was designed to provide to the study staff with information on the extent and location of business operations in the ROW, problems encountered and severity, source of any complaints, procedures (if any) used to remove vendors, product line, and SDHPT man hours expended in correcting roadside problems created due to these businesses.

#### 3.2 Business Types

According to information developed in the SDHPT survey, there were over 2,300 locations identified where businesses operate within the right-of-way, customers park in right-of-way (no off roadway parking provided) or products displayed in right-of-way. It is highly probable that not all sites were identified by SDHPT. In addition to identifying the locations and products sold the respondent was asked to indicate the severity of associated problems by product category on a scale of 1 to 5, with 5 being the most severe. The severity index is a weighted average by product category on a statewide basis. It is not site, county or district specific. For a specific product category it is computed as follows:

$$\frac{(\text{Number of Locations/Survey})(\text{severity ranking})}{\text{Total Number of Locations Statewide}} = \text{Severity Index}$$

A severity index can be computed for an individual district or region of Texas.

Table 3.1 presents information on products sold, number of sites, and severity index. Of the 2,329 locations reported, 476 (20.4 percent of the total), were sites where home grown produce is sold. The severity index for this product category is 2.52 on a possible 5.0. The product category with the highest severity index is used automobiles at 4.15. Five product categories (used automobiles, commercial produce, and fireworks commercial items and other) had a severity index above 3.28 the severity index for the "total" of all products. The information presented in Table 3.1 indicates that a large number of businesses operate within highway rights-of-way, they sell an assortment of products, and they are perceived by SDHPT personnel to pose a relatively severe problem to roadside maintenance activity. (It should be observed that at only one quarter of these sites are items of a home grown or homemade sold to the motoring public). Some of these concerns these businesses present are discussed in subsequent sections.

Table 3.1. Number of Vendor Locations by Product Category and Severity Index

Product Category	Number of Locations	Percent of Total	Product Category Severity Index
Home Grown Produce	476	20.4	2.52
Commercial Produce	307	13.2	3.41
Fireworks	458	19.7	3.37
Used Automobiles	271	11.6	4.15
Food Products	260	11.2	2.69
Commercial Items	377	16.2	3.80
Handmade Items	116	5.0	2.46
Other	64	2.7	3.67
<b>TOTAL</b>	<b>2329</b>	<b>100.0</b>	<b>3.28 Statewide Index</b>

### 3.3 Locational Aspects

Roadside businesses are found in practically all areas of the State and on all types of highways. Roadside businesses are, not surprisingly, especially prevalent in the highway districts in which major cities are located. High populations and vehicular traffic are

Table 3.2 shows the number of roadside businesses by urban-rural classification and product category. The classification is based upon the 28 Metropolitan Statistical Areas (MSA) in Texas. With the exception of the Amarillo MSA, which includes Potter and Randall Counties, only the centroid county of the MSA is included in the Urban classification. For example, although the Houston MSA includes five counties only Harris is defined as urban in this report. A total of 29 counties are in the Urban classification. This represents 11.4 percent of Texas counties and 10.4 percent of the 280 SDHPT surveys.

Table 3.2. Distribution of Roadside Businesses by Product Category and Location

Product Category	<u>Location</u>				Total
	<u>Urban</u>		<u>Rural</u>		
	Number	Percent	Number	Percent	
Home Grown Produce	122	25.6	354	74.4	476
Commercial Produce	136	44.3	171	55.7	307
Fireworks	184	40.2	274	59.8	458
Used Automobiles	149	55.0	122	45.0	271
Food Products	97	37.3	163	62.7	260
Commercial Items	222	58.9	155	41.1	377
Handmade Items	44	37.9	72	62.1	116
Other	48	75.0	16	25.0	64
<b>TOTAL</b>	<b>1002</b>	<b>43.0</b>	<b>1327</b>	<b>57.0</b>	<b>2329</b>

Of the 2,329 on right-of-way business sites identified more than 1,000 or 43 percent were located in urban counties. Considering the number of urban counties, this represents a concentration of almost 35 sites per urban county compared to almost 6 sites per rural county. For every business located on highway rights-of-way in the average rural county, there are approximately six in the urban counties. As would be expected the vast majority (74.4 percent) of businesses selling home grown produce are located in rural counties. Businesses engaged in selling fireworks, food products, and handmade items tend to be found in rural areas. Those classified as handling commercial produce, various commercial items, and displaying used automobiles in the right-of-way are predominately in urban counties.

The data in Table 3.2 clearly show that businesses are operating in the rights-of-way extensively in both urban and rural counties. However, the data indicate urban counties experience a relatively high concentration of these businesses.

Information was requested in the SDHPT survey describing the kind of highways usually used by roadside businesses. The respondent was asked to indicate all that apply for the county. Table 3.3 shows the distribution of highway type by location (This does not indicate the number of businesses on each highway type). Statewide, as well as in rural counties, these businesses tend overwhelmingly to locate adjacent to two lane and four lane undivided facilities. In urban areas, two and four lane undivided facilities still represent the majority of location sites. However, a relative high percentage of the responses from urban counties indicated that these businesses also locate on four lane divided highways as well as freeways both with and without frontage roads. In fact, 16.8 percent of the responses from urban counties indicated that these businesses are found along freeways with frontage roads compared to 7.2 percent from rural counties. In rural areas, it appears the roadside businesses tend to avoid the higher type facility. In the urban counties, the higher type highway is a more attractive site.

Table 3.3. Distribution Roadside Businesses by Highway Type and Location

Highway Type	<u>Location</u>				Total	Percent of Total
	<u>Urban</u>		<u>Rural</u>			
	Number	Percent of Total	Number	Percent of Total		
Two Lane	44	37.0	161	50.2	205	46.8
Four Lane	24	20.2	77	24.1	101	23.1
Four Lane Divided	27	22.7	53	16.6	80	18.3
Freeway with Frontage	20	16.8	23	7.2	43	9.8
Freeway without Frontage	4	3.2	5	1.6	9	2.0
<b>TOTAL</b>	<b>119</b>	<b>100.0</b>	<b>319</b>	<b>100.0</b>	<b>438</b>	<b>100.0</b>

### 3.4 SDHPT Concerns

Two major aspects of roadside businesses are maintenance problems associated with the right-of-way (including safety considerations) and complaints arising from these businesses' operations. Both of these are costly and time consuming to SDHPT personnel. The survey sent to the District offices requested information on the type of problems encountered by SDHPT at these sites and the source of any complaints regarding these businesses. Each question could have multiple responses.

Information on the problems found a roadside business sites and source of complaints by urban/rural classification are shown below. Table 3.4 shows the distribution of problems at vendor sites. The 280 respondents indicated a total of 657 problems in six categories. More than 61.0 percent of the surveys indicated that safety was a problem at roadside business locations. Vegetation damage was indicated as a right-of-way problem caused by these businesses on 45.0 percent of the surveys. In addition over 40.0 percent of the surveys showed that both litter and soil erosion and rutting are found at locations used by roadside businesses.

Table 3.4. Distribution of Problems Encountered by SDHPT at Roadside Business Locations, by Urban-Rural Classification

Problem	Urban	Percent of Total	Average Per Urban County	Rural	Percent of Total	Average Per Rural County	Total
Litter	34	28.3	1.2	86	71.7	0.4	120
Vegetation Damage	37	29.4	1.3	89	70.6	0.4	126
Pavement Damage	34	35.8	1.2	61	64.2	0.3	95
Soil Erosion and Rutting	37	32.2	1.3	78	67.8	0.3	115
Safety	41	24.0	1.4	130	76.0	0.6	171
Other	7	23.3	0.2	23	76.6	0.1	30
<b>TOTAL</b>	<b>190</b>	<b>28.9</b>	<b>6.6</b>	<b>467</b>	<b>71.7</b>	<b>2.1</b>	<b>657</b>

Note: A total of 280 surveys covering all 254 counties were returned by SDHPT.

The majority of problems (467) are found at rural locations, however, it appears that a disproportional percent of problems occur at urban locations. Considering that only 29 counties (some with more than one maintenance section) are included in the Urban classification and the remaining 225 are defined as rural practically every urban county or maintenance section encountered some type of problem at these sites. Conversely only one problem type, safety, was indicated as a problem by more than half of the 225 rural counties. **However, safety is the largest reported problem encountered at both urban and rural sites.**

SDHPT receives complaints regarding roadside businesses from various sources as shown in Table 3.5. It is emphasized that the data show the source of complaints as indicated on the survey and not the number of complaints per source. The most frequent source of complaints was the General Public category which was indicated by 24.6 percent of the respondents. This was followed by Established Businesses at 21.8 percent.

Table 3.5. Distribution of Source of Complaints Received by SDHPT Due to Roadside Businesses by Urban-Rural Classification

Source of Complaints	Urban	Percent of Total	Percent of Urban Counties	Rural	Percent of Total	Percent of Rural Counties	Total
Land Owners	13	31.0	0.4	29	69.0	0.1	42
Established Businesses	21	34.4	0.7	40	65.5	0.2	61
Customers	5	71.4	0.2	2	28.6	*	7
Motorist	16	42.1	0.6	22	57.9	0.1	38
General Public	22	31.9	0.8	47	68.1	0.2	69
Other	5	41.7	0.2	7	58.3	*	12
<b>TOTAL</b>	<b>82</b>	<b>35.8</b>	<b>2.8</b>	<b>147</b>	<b>64.2</b>	<b>0.7</b>	<b>229</b>

\* Less than 0.05

Again, however, a much higher percentage of the urban counties than rural counties indicated that they receive complaints from the various sources. More than 75.0 percent of the urban counties receive complaints from the General Public while only 20.9 percent of the rural counties indicated this group as a source of complaints. Established Business was the second leading source of complaints by both urban and rural counties.

The data presented in Table 3.4 and 3.5 indicate that roadside business problems and associated citizen complaints are much higher, more frequent, and pervasive in urban areas than at rural locations. It is also apparent that both urban and rural counties encountered roadside problems and receive complaints as a result of these businesses in the rights-of-way.

### 3.5 Removal of Roadside Businesses from Highway Rights-of-Way

The survey completed by SDHPT personnel requested information regarding efforts to remove businesses from highway rights-of-way. One question was directed to SDHPT efforts and the other to those of the DPS. This sections presents the information provided in response to these questions.

Table 3.6 indicates that SDHPT personnel do ask roadside businesses to move from the ROW. But this action frequently depends on the circumstance and location of the activity. Only 10.0 percent of the respondents indicated that they did not ask the vendors to move from highway rights-of-way. Twenty-four surveys did not respond to this question, but, they were from counties which reported no roadside businesses. The success of SDHPT personnel in requesting businesses to move was not addressed. However, even if the business moves, it is highly probable that it moves to a different ROW location.

Table 3.6. SDHPT Personnel Ask Roadside Businesses to Move

Response	Number of Responses	Percent of Total
Yes	102	36.4
No	28	10.0
Depends on Circumstance and Location	126	45.0
No Response	24	8.6
TOTAL	280	100.0

Table 3.7. SDHPT Asks DPS to Remove Roadside Businesses

Response	Number of Responses	Percent of Total
Never	113	36.3
Only in No Parking Area with Sign	46	14.8
Only if They Cause Traffic Problems	103	33.1
Always	20	6.4
No Response	29	9.3
TOTAL	311	100.0

Note: Some surveys had more than one response.

Another method to remove roadside businesses is for SDHPT personnel to ask for the cooperation of DPS officers. As seen in Table 3.7, however, 36.3 percent of the surveys indicated that they never asked for DPS assistance. One-third of the survey indicated that they sought DPS help if the businesses caused traffic problems, and less than 15.0 percent asked for help if the vendor was operating in a "No Parking" area. Only 6.4 percent indicated that they always asked for DPS assistance to remove roadside businesses. Again, the "No Response" respondents are primarily in counties reporting no roadside businesses.



It appears the SDHPT might seek additional DPS assistance in dealing with these businesses. The request of a uniformed DPS officer probably will make more of an impression on the operator than one from SDHPT personnel.

### 3.6 Maintenance and Repair Costs

An estimate of man hours per month spent at roadside businesses was provided by SDHPT for various maintenance and repair categories. The annualized estimates are presented in Table 3.8. More than 72,000 man hours per year are estimated to be spent by SDHPT personnel repairing damage at these locations. This amounts to almost 35 man years annually (approximately 1.5 per district). Also, these estimates do not include hours spent by contract workers, primarily in litter clean up, at these sites. Repair of pavement and shoulder damage at these sites accounted for 26.7 percent of the total man hours spent at these locations.

Table 3.8. Estimated Annual SDHPT Man-Hours Spent and Expenditures Incurred at Roadside Business Locations by Maintenance and Repair Category

Maintenance and Repair Category	Man-Hours Per Year	Percent of Total	Expenditures in Thousands of Dollars	Percent of Total
Litter Clean Up	14,832	20.5	263.4	16.5
Repair of Pavement and Shoulders	19,332	26.7	527.4	33.0
Sign Removal	18,756	25.9	333.1	20.8
Repair of Vegetation and Soil Damage	14,160	19.6	330.4	20.7
Official Sign Repair and Replacement	4,728	6.5	131.5	8.2
Contact with Vendors	588	0.8	13.0	0.8
<b>TOTAL</b>	<b>72,396</b>	<b>100.0</b>	<b>1,598.8</b>	<b>100.0</b>

SDHPT also provided per hour costs for the several maintenance and repair categories. The costs include labor, equipment, and material for each category. Table 3.8 also summarizes the maintenance and repair costs on a statewide basis. Approximately \$1.6 million annually are spent by SDHPT correcting and repairing damage at these sites. Repair of Pavement and Shoulder Damage is the most expensive category and represents a third of the total expenditures.

## 4.0 Highway Safety Effects of Roadside Businesses

### 4.1 Safety and Visual Distraction

The location of itinerant merchant operations poses potential safety problems to the motoring public, customers, and even the vendors themselves. The proximity of the merchant's structure, whether it be mobile or "permanent", can be particularly hazardous if the structure is located close to the traveled portion of the roadway. Customers are commonly required to park on or near the shoulder, which increases the chance of passing motorists striking parked vehicles. Little or no protection from possible errant vehicles is offered to pedestrians, whether they are customers or vendors themselves. On higher speed facilities, accidents resulting from vehicles leaving the roadway and striking parked vehicles, pedestrians, or structures can be quite severe.

There is a greater speed differential in the vicinity of itinerant businesses as customers enter and depart from the traffic stream at locations not intended to serve as access points. Speed variance may be quite significant on facilities such as rural highways and urban arterial streets. It is generally true that greater speed variance is correlated with higher accident rates.

Structures and vehicles located near the roadway may interfere with motorists' ability to see approaching vehicles, pedestrians, or objects in the roadway. Reduction of sight distance allows less time to react to a potentially hazardous situation, which increases the possibility of an accident occurring. Itinerant businesses located at unsignalized intersections or in horizontal curves are typical examples of this scenario (see Figures 4.1 & 4.2).

To attract customers, itinerant merchants sometimes erect signs, banners, etc., and display their goods. Subsequently, when motorists to look in the direction of the vendor, this temporary distraction may cause motorists to ignore traffic control devices or relevant changes in traffic conditions (such as sudden slowing or stopping ahead) that lead to accidents. Particularly in urban areas, advertising signs competing with traffic control devices (signals, signs, marking, etc.) in a cluttered visual array can cause motorists to miss pertinent information. Although visual distraction does not pose a severe a safety threat as the other problems listed above, it should be considered a potential hazard nonetheless.

With respect to safety, the main difference between urban and rural locations involves vehicle speeds. In rural areas, traffic will generally be free-flowing and speeds

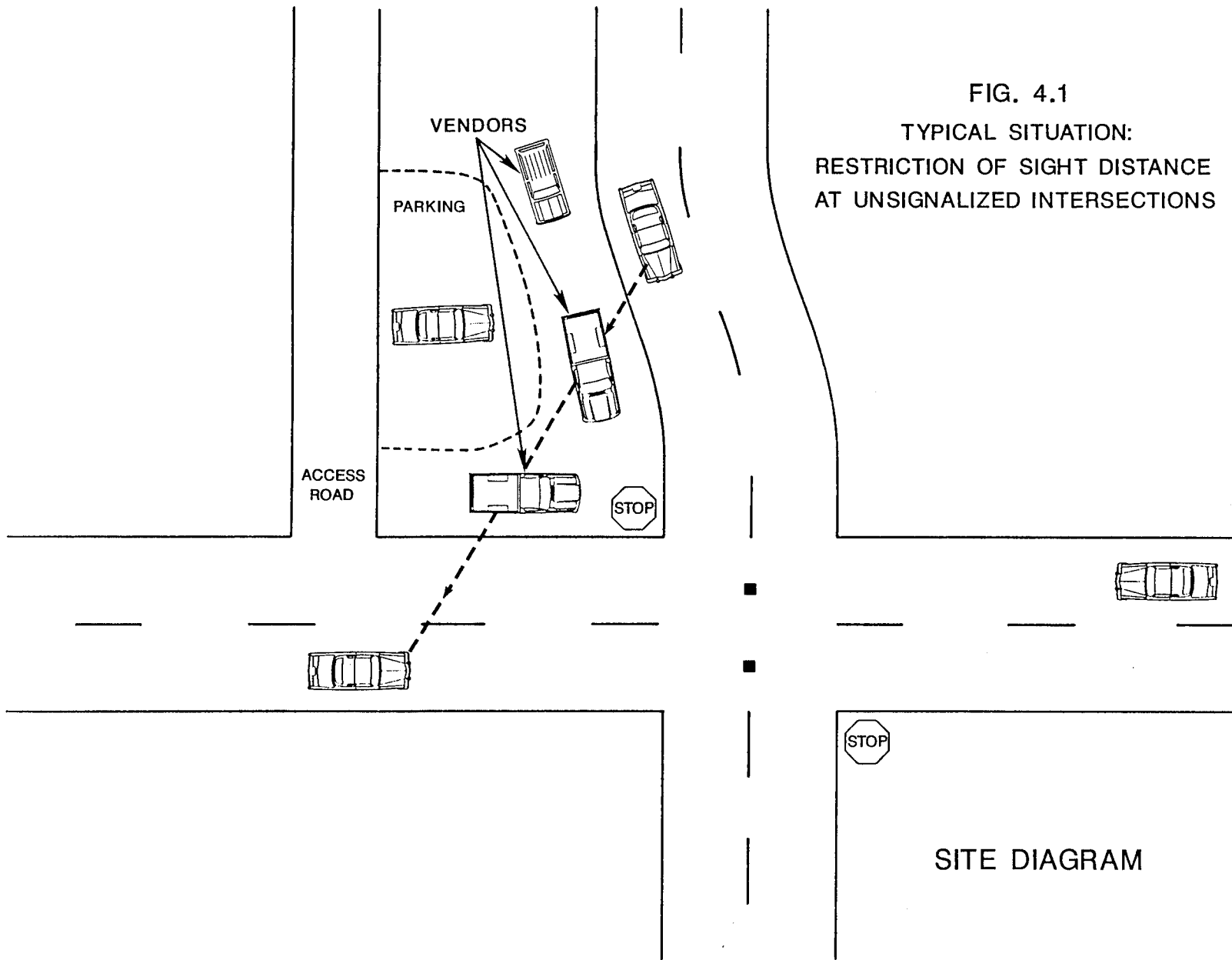


FIG. 4.1  
TYPICAL SITUATION:  
RESTRICTION OF SIGHT DISTANCE  
AT UNSIGNALIZED INTERSECTIONS

SITE DIAGRAM

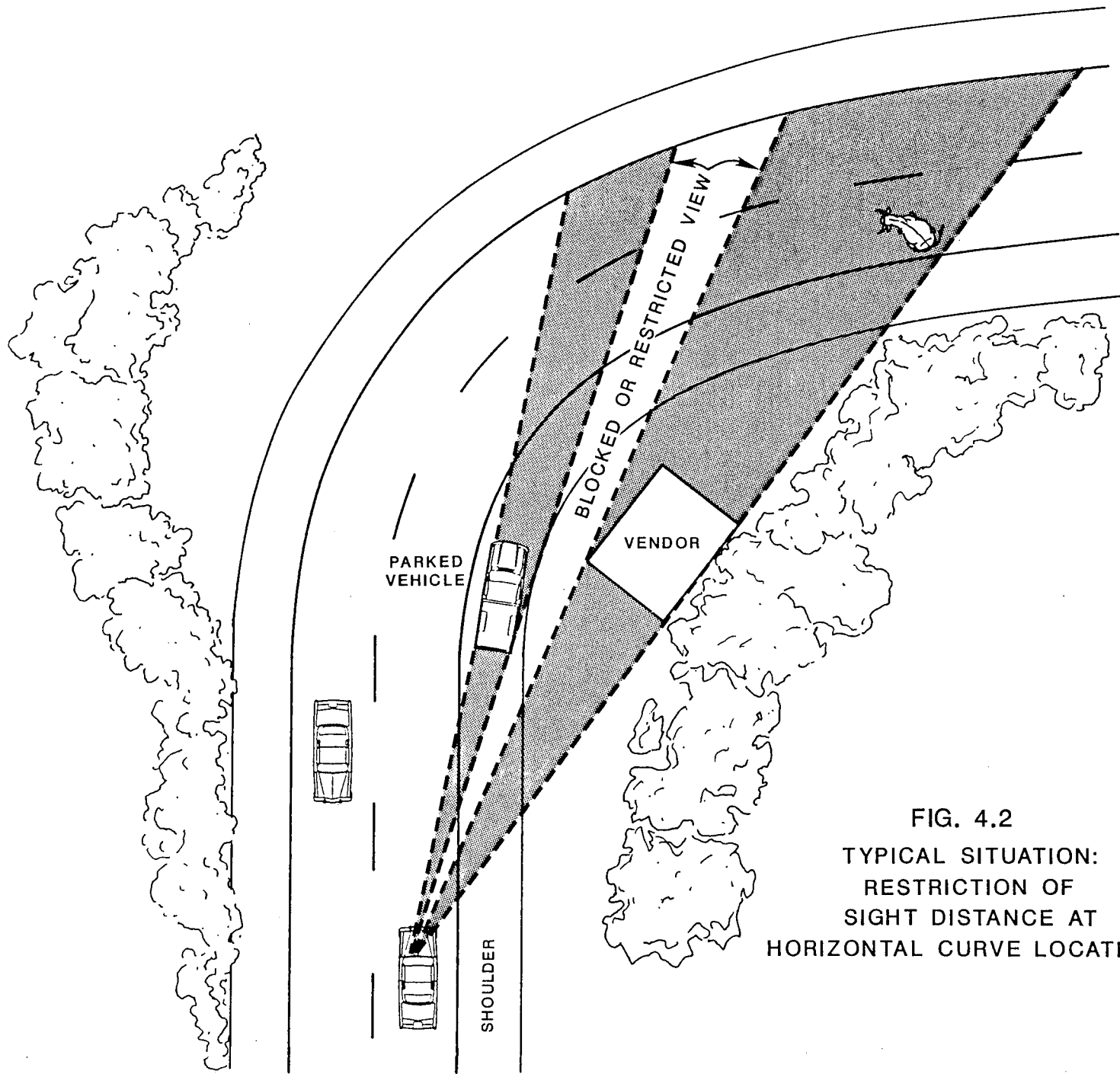


FIG. 4.2  
TYPICAL SITUATION:  
RESTRICTION OF  
SIGHT DISTANCE AT  
HORIZONTAL CURVE LOCATIONS

relatively high (typically 50 mph or greater, depending on the facility). Because of the higher speeds, accidents are likely to be more severe. Compared to urban areas, traffic volumes are not as high, so the likelihood of vehicle conflicts and accidents is less.

Speeds will be typically lower in urban areas than in rural areas. However, on some arterial streets, speeds may approach or even exceed 45 mph. Thus, vendors located in the right-of-way of these facilities are exposed to higher traffic volumes at more than moderate speeds. Higher traffic volumes mean more vehicle conflicts, which are reflected in higher accident rates for some facilities.

#### 4.2 Department of Public Safety Survey

The project team with State Department of Highways and Public Transportation concurrence distributed a questionnaire to all Highway Patrol sergeants in Texas. The logic was that troopers on their regular tours of duty encounter nearly all the rural located roadside merchant activity, and would have valuable insights into the law enforcement and highway safety impact of these businesses. The questionnaire was distributed in November and December of 1987.

The questionnaire used in this survey is furnished in the Appendix. This two-page combined multiple-choice and short-answer instrument was mailed in packets by the DPS to each region, complete with self-addressed and franked return envelopes. Out of approximately 200 forms sent by the DPS, 149 were returned--a very impressive response rate. Most forms were completed by sergeants, and they reflect their own experiences and those of the troopers that they supervise. A few of the forms were completed by troopers, rather than sergeants. One return was blank, and eleven were incomplete.

#### 4.3 Results

##### 4.3.1 Responses to Multiple Choice Questions

##### **1. Do vendors make any effort to touch base with your office before setting up their business?**

The DPS answer to this is reasonably unequivocal, as can be seen in Table 4.1. Such contact was reported as "seldom" by about ten per cent of the respondents. Only 4 officers reported that vendors sometimes contacted the DPS before setting up. This finding does

not necessarily mean that vendors do not seek permission or at least coordination before they start selling by the roadside, but only that they do not check with the DPS.

Table 4.1: Frequency of Contact By Vendors with DPS Prior to Locating Operations

Frequency	Number Responding	Percent of Total
Often	1	0.7
Sometimes	4	2.9
Seldom	14	10.1
Never	120	86.3
TOTAL	139	100.0

**2. Do your troopers visit/check out vendors when they see them on the roadside?**

Most commands in the DPS do make something of a practice of checking out vendors, as can be seen in Table 4.2. Only 14.5 per cent of the respondents indicated that they never did this. For most officers this seems to be an occasional activity.

Table 4.2: Frequency of DPS Checks at Vendor Sites

Frequency	Number Responding	Percent of Total
Often	6	4.3
Sometimes	53	38.4
Seldom	59	42.8
Never	20	14.5
TOTAL	139	100.0

**3. In the past year, have any of your troopers had to arrest a vendor for something related to his business activity?**

Table 4.3 suggests that very few vendors have gotten into trouble with DPS over their activities. This does not seem to be a significant factor in the consideration of the impact of roadside vendors on the people of Texas.

Table 4.3: Arrest of Vendors by DPS

Response	Number of Responding	Percent of Total
Yes	5	3.5
No	138	96.5
TOTAL	143	100.0

**4. Do your troopers issue citations to roadside vendors if a Highway Department "NO PARKING" sign is in sight, or do they tell them to move to another (unsigned) location?**

Most troopers just tell the vendor to move, without issuing any citation, as can be seen in Table 4.4. Other responses split almost evenly between the actual issuance of a citation and "unknown," which here can be taken to mean that the sergeants do not know what their troopers do with regard to this situation.

Table 4.4: DPS Procedure When Vendor Locates in No Parking Zone

Response	Number Responding	Percent of Total
Issue Citation	34	24.1
Have Them Move	78	55.3
Unknown	29	20.6
TOTAL	141	100.0



**5. Do you consider the vendors to be a safety hazard on the roadside?**

Most of the officers do consider the roadside vendor to be a hazard, as Table 4.5 clearly reveals. By a ratio of 3:1, an affirmative response was given to this question.

Table 4.5: Traffic Hazards Created by Roadside Vendors

Response	Number of Responding	Percent of Total
Yes	103	77.4
No	30	22.6
TOTAL	133	100.0

**6. In the past year, have there been any accidents in your area in which a roadside vendor was a cause, either directly or indirectly?**

Table 4.6 should be considered in the light of the response to the previous question. Although vendors are considered to be a safety hazard, their actual involvement in accidents as perceived by these same officers is very small. Only 10 respondents indicated that any accidents in which the presence of the roadside vendor played a part had occurred in the past year. In all, 12 accidents were reported.

Table 4.6: Accidents Caused (Directly or Indirectly)  
Roadside Vendor Activity

Response	Number of Responding	Percent of Total
Yes	10	7.5
No	124	92.5
TOTAL	134	100.0

**7. Do roadside vendors cause problems other than safety problems?**

Table 4.7 indicates that other problems are encountered as perceived by about a third of the officers. Two-thirds do not think that roadside vendors cause problems.

Table 4.7: Are Non Traffic Problems Caused by Roadside Vendors

Response	Number of Responding	Percent of Total
Yes	45	33.8
No	88	66.2
TOTAL	133	100.0

**4.4 Follow-up Question Results**

The short-answer responses to the follow-up questions posed after each of the multiple-choice questions discussed above can be summarized as follows.

**1. If (your troopers) visit (vendors) for official reasons, what are those reasons?**

As Table 4.8 shows, the reasons for making these visits fall into two equal categories: (1) a "routine check," which consists of merchandise inspection and verification of the identities of the individuals operating the roadside stand, and (2) in connection with traffic hazards that the vendors may cause.

Table 4.8: Reasons DPS Check Vendor Sites

Response	Number Responding	Percent of Total
Routine Checks	32	46.4
Traffic Hazards	37	53.6
TOTAL	69	100.0

## 2. Arrest Activity

Responses to the follow-up question for the reasons that troopers had to arrest the few (5) roadside vendors were related to littering and to placing an unreasonable number of signs in the right-of-way.

## 3. Why or why are not roadside vendors a safety hazard?

The officers felt that parking on the right-of-way posed a safety hazard to the public, and this situation also led to entering and leaving the stream of traffic as a disturbance. They think roadside businesses also cause erratic driving as the passing motorists look at the signs and business activity, and these vendors may cause drivers to stop suddenly in the traffic stream. In other words, roadside businesses can distract the driver from the primary task of driving. The presence of customers and vendors as pedestrians on or near a roadway were also cited as hazards. The obstruction of the right-of-way for mowers or other maintenance activities are less serious problems in the troopers' view. These findings are summarized in Table 4.9. A few responses also said that obstruction of sight distance by roadside vendor activity was a hazard; the signs and the stand itself kept drivers from seeing upcoming intersections or other features. One officer remarked that vendors on county roadways need to be controlled as much as those on US or State highways (presumably including farm/ranch-to-market roadways).

Table 4.9: Reason Roadside Vendors Considered Traffic Hazards

Response	Number Responding	Percent of Total
Signs on ROW	4	2.9
Pedestrians	8	5.8
Motorist Distractions	17	12.2
Erratic Driving	19	13.7
Entering and Exiting Site	35	25.2
Parking on ROW	43	30.9
Others	13	9.3
TOTAL	139	100.0

#### 4. How many accidents have been caused by a roadside vendor?

Twelve accidents over the past 12 months were enumerated, and three accident reports submitted. These accidents involved pedestrian casualties and collisions between passing traffic and vehicles entering the stream from roadside stands. In two cases, a vehicle impacted the stand or customers near the stand. Several instances were cited in which impaired visibility caused by the presence of the vendor and vehicles parked in the vicinity were contributory factors in a collision.

#### 5. What kinds of problems do roadside vendors cause?

Vendors are seen to cause a variety of problems. The most prevalent is, of course, littering. Another problem posed by the vendors is indirect destruction of the right-of-way off the shoulder caused by vehicles parking and maneuvering on ground that was never intended for such use. Other problems are squabbles among rival vendors for the same location, price wars, complaints from legitimate businesses about vendor practices and competition, and comments that roadside vendors do little to improve the roadside appearance or environment. These comments are summarized in Table 4.10.

Table 4.10: Type of Non-Traffic Problems Created by Roadside Vendors

Response	Number Responding	Percent of Total
Public Disturbance	4	9.3
Complaints form other Businesses	6	14.0
Aesthetics	6	14.0
Destruction of ROW	8	18.6
Littering	19	44.1
TOTAL	43	100.0

#### 4.5 Summary of Findings

DPS troopers and their supervisors do not consider roadside vendors to be a major problem in highway safety in most parts of the State. A few areas (for example, northwest Harris County) consider them to be real nuisances. So far as the DPS is concerned, these business activities seldom if ever check in with the Highway Patrol before beginning operations. The incidence of actual accidents in 1987 would seem to be negligible (12), considering the probable volume of activity engaged in by roadside vendors.

Only one respondent commented on the impact roadside vendors might have on access to private property fronting on the vendor-intruded right-of-way, or to negative reactions from such property owners. It is possible that the State Department of Highways and Public Transportation picks up a lot more of these kinds of complaints, however.

The DPS appears to treat errant roadside vendors in a direct fashion as the need arises, without a great deal of formal citation or arrest activity. Simply telling a vendor to move is usually enough to eliminate a perceived hazard.



## 5.0 Results of On-Site Visits

### 5.1 Introduction

As part of the project, researchers visited and interviewed selected vendors doing business in the rights-of-way. During the months of May, June, and July 1988, TTI staff members visited specific vendor locations throughout the state. The locations of the 99 sites visited were obtained from an earlier questionnaire mailed to District Engineers requesting information on sites frequently used by vendors. The purposes of these on-site visits were to survey the location, to identify certain characteristics of the site, determine product(s) line, and to interview the operator about specific attributes of the business. (A copy of the questionnaire used in this survey is found in Appendix 1).

The interviewers conducted a visual inspection of the site in order to provide specific information about the location, products sold, traffic and roadway, and business activity. In addition, a sketch of the site (including any signs encountered while approaching it) was drawn and photographs were taken. Questions pertaining to operator information and certain business aspects could only be obtained by interviewing the vendor, providing he or she was willing to cooperate. At approximately 60% (59) of the 99 sites surveyed, the vendors were interviewed. The interviewers were instructed to leave the site if asked or if the operator was uncooperative.

### 5.2 Roadway Characteristics

As each site was visited, investigators recorded information pertaining to roadway and shoulder type. Additionally, any traffic control devices within 100 feet of the location were noted. The findings are shown in Tables 5.1, 5.2, and 5.3.

The data in Table 5.1 indicate most vendors locate along two-lane roads. This is logical, since a majority of roadside merchants operate in rural areas that are serviced by two-lane highways. Also, the information in this table closely parallels the roadway data contained in the SDHPT survey. (See: Table 3.3) Results were tabulated for 96 out of 99 vendor locations.

Table 5.1. Number of Lanes at Vendor Site

Roadway Type	Number Observed	Percent of Total
2 Lane	49	51.0
2 Lane with Center Turn Lane	3	3.1
4 Lane	12	12.5
4 Lane with Median	17	17.7
4 Lane with Barrier Divider	4	4.2
4 Lane with Center Turn Lane	11	11.5
TOTAL	96	100.0

\*Not recorded: 3 sites

The different shoulder types at vendor sites are shown in Table 5.2. Over half of the sites investigated were located along roadways with paved shoulders. This allows customers easy access and parking. However, it also creates a safety hazard for passing traffic.

Table 5.2. Shoulder Types at Vendor Sites

Shoulder Type	Number Observed	Percent of Total
Paved	48	57.1
Gravel	16	19.0
Dirt	1	1.2
Grass	11	13.1
Other	8	9.5
TOTAL	84	100.0

\*Not recorded: 15 sites



A disturbing fact is the habit of vendors, locating near traffic control devices. While some of the devices are delineators, others are official information and warning signs. In these situations, there is little doubt that the vendor distracts the motorists attention away from the warning sign to his or her place of business. (See Section 4.0) Table 5.3 shows the number and kinds of traffic control devices found within 100 feet of vendor locations. Since it was possible for more than one type of control device to be located next to a vendor location, the number of devices is more than the number of vendors sites.

Table 5.3. Traffic Control Devices Within 100 Feet of Vendor Site

Control Device	Number of Observed	Percent of Total
Stop Sign	23	16.7
No Parking Sign	7	5.1
Speed Limit Sign	14	10.1
City Limit Sign	4	2.9
"Warning" Sign	12	8.7
Official Information Sign	36	26.1
Flashing Red Light	5	3.6
Traffic Light	21	15.2
Delineators	14	10.1
Other	2	1.5
<b>TOTAL</b>	<b>138</b>	<b>100.0</b>

### 5.3 Site Characteristics

Information on physical aspects of the vendor sites is found in Table 5.4. Interestingly, noticeable litter was found at only approximately 20 percent of the sites visited. Just as established businesses are concerned with the appearance of their premises, roadside vendors may attempt to keep a neat site. Customers are not attracted to produce sold at messy or cluttered locations. As will be seen, many of the sites visited have been used by the vendors for a considerable period of time. Thus they have a vested interest in maintaining an attractive location. Since SDHPT has an active litter control policy, it may be that SDHPT, rather than the vendors, performs this "housekeeping" function. While litter

may not present a serious problem, rutting and vegetation damage does. Combined, the two occurred 44 times. Since a large number of vendor locations are grass (Table 5.5), customers and their cars quickly turn a smooth grassy right-of-way surface into a rutted, barren unattractive one.

Table 5.4. Vendor Site Physical Data

Type of Damage	Number Observed	Percent of Total
Litter in Area	13	13.1
Apparent Vegetation Damage	23	23.2
Pavement Damage	6	6.1
Soil Erosion/Rutting	21	21.2
Other	3	3.0
No Apparent Damage Observed	33	33.3
<b>TOTAL</b>	<b>66</b>	<b>100.0</b>
Not recorded: 33 sites		

Table 5.5. Site Surface Characteristics

Location Surface	Number Observed	Percent of Total
Vegetation	37	37.4
Gravel and Shell	36	36.4
Dirt	13	13.1
Paved Surface	13	13.1
<b>TOTAL</b>	<b>99</b>	<b>100.0</b>

The actual facilities used by the vendor as a place of business varied from pickup trucks to permanent structures. (See: Table 5.6) At majority of the vendor sites, the business operated out of a pickup truck, van or panel vehicle (55%). Some used portable trailers, while others sold out of temporary structures. Once again, a site might have

included more than one type of characteristic. Therefore, the number of characteristics exceeds the number of sites visited.

Table 5.6. Vendor Facility Characteristics

Characteristic	Number Observed	Percent of Total
Pickup Truck/Van/Panel Vehicle	55	51.4
Portable Trailer/Bar-B-Que Pit	17	15.9
Permanent/Semi-Permanent Structure	16	15.0
Temporary Structure	3	14.0
Large Truck	3	2.8
Other	1	0.9
<b>TOTAL</b>	<b>107</b>	<b>100.0</b>

#### 5.4 Product and Signing

On site investigations revealed interesting facts concerning vendor product data and operator information. At the ninety-nine sites visited, the different products and number of observations being classified as shown in Table 5.7. The selling of commercial items out numbers home made or grown products by two-to-one. Recalling Table 3.2, it was reported by SDHPT that approximately 75 percent of the roadside businesses sold commercial products. The on-site survey found that 66.4 percent of the businesses sold commercial items. These results confirm that the major participants in roadside vending are no longer the individuals that produced the items sold.

Table 5.7. Distribution of Products Sold at Vendor Sites

Product Type	Number	Percent of Total
"Home Grown" produce	30	25.2
"Commercial produce	25	21.2
Prepared food/beverages	10	8.4
Unprepared food products	1	0.8
Commercial or Souvenir items	16	13.4
Fireworks	7	5.9
Handmade items	10	8.4
Other	20	16.8
<b>TOTAL</b>	<b>119</b>	<b>100.0</b>

Signs advertising products were observed on the approach to 31 of the vendor locations. Forty-seven of the vendors used signs **at their locations**, not including signs placed on vehicles, structures, etc. Practically all had some form of advertisement describing the goods they sold -- approaching the site, free standing at the site, or attached. In rural areas, advertising signs were frequently observed several miles ahead of the site. Significantly, signs were often found placed immediately on the pavement edge. Also, in instances where signs were placed and removed on a daily basis, rutting and vegetation damage in the ROW was apparent.

### 5.5 Operator Information

Vendors were asked the length of time spent at current location (in years). As shown below in Table 5.8, over half of the vendors indicated they had been using the same site for more than a year. This supports the belief that permanent roadside vending has become an established business. Also, it indicates the widespread acceptance of this practice.

Table 5.8. Length of Time Operating at Site

Time in Years	Number Responding	Percent of Total
Less than 6 months	22	33.3
6 months to one year	9	13.6
One - three years	23	34.9
Three - six years	7	7.6
More than six years	5	7.6
TOTAL	66	100.0

Customers per day will vary by location. However, over half of the vendors responding indicated they served less than 50 customers a day. There were instances of vendors serving large volumes of customers per day. At some locations, it was apparent that the business had developed a loyal clientele. Responses to the inquiry about the number of customers per day are shown in Table 5.9.

Table 5.9. Customers Per Day at Vendor Sites

Customers/Day	Number Responding	Percent of Total
Less than 50	28	54.9
51 - 100	17	33.3
101 - 300	5	9.8
More than 300	1	2.0
TOTAL	51	100.0

The reasons cited by roadside vendors for selecting a certain location are shown in Table 5.10. These reasons have many of the same characteristics as those used by other businesses in selecting an operating site. High traffic counts, business visibility, customer parking, access and egress, and the attraction of other businesses are all accepted location

factors. It is obvious that for some businesses and locations, these factors are found within SDHPT rights-of-way. Heavy traffic volumes at the site were the most frequently mentioned selection factors. However, parking considerations including the existence of wide shoulders were also found to be important in site choice.

It should be noted that only three percent of the responses indicated that the site was selected because it was near the vendor's home. This suggests that the concept of "the farmer selling his goods next to the road" is a myth. While this may have been true at one time it is rarely the case today.

Table 5.10. Reason Cited by Vendors for Site Selection

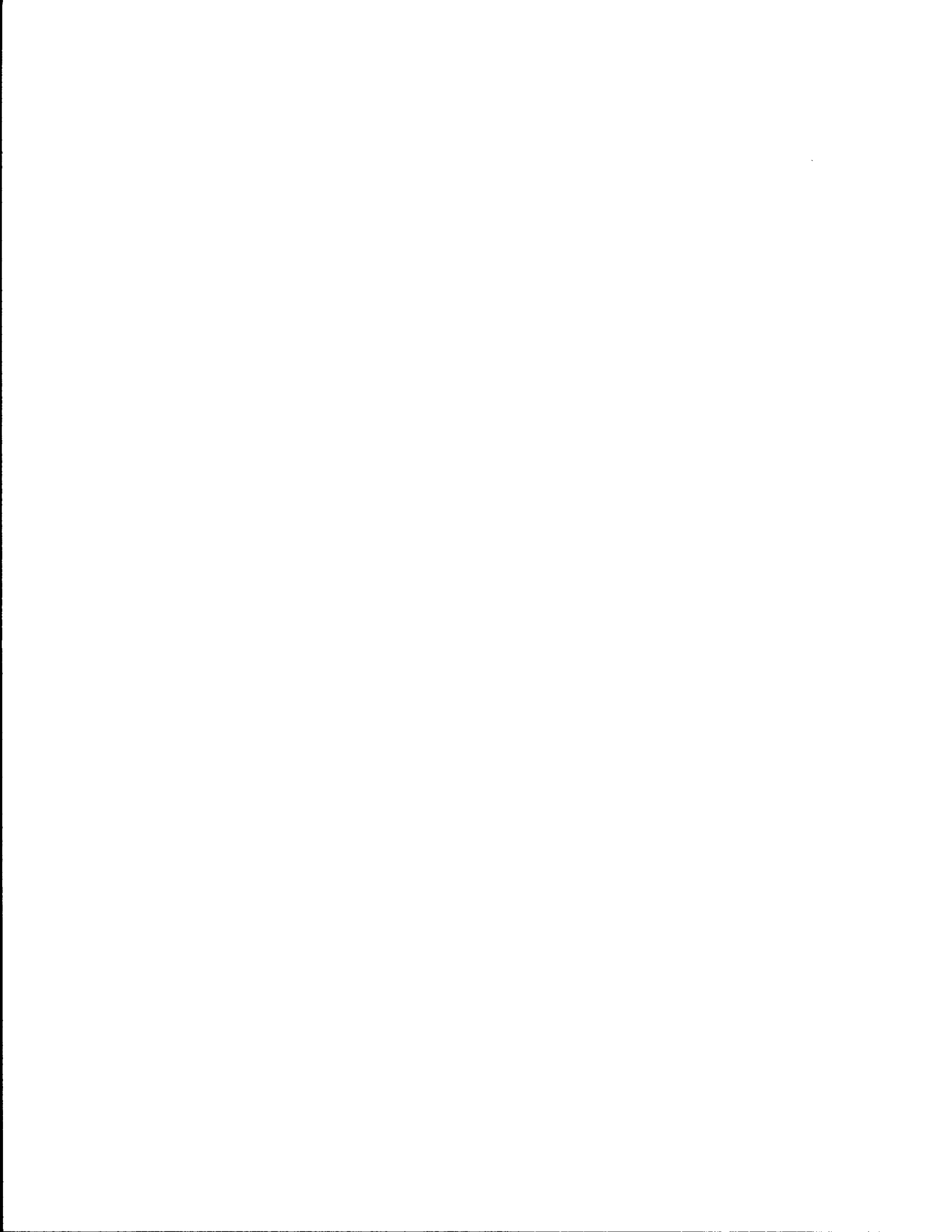
Reason	Number of Responses	Percent of Total
Wide Shoulder	13	14.1
Heavy Traffic	29	31.5
Speed of Traffic	5	5.4
Surrounding Businesses	3	3.3
Surrounding Vendors	15	16.3
Near Vendor's Home	3	3.3
Ease of Access	11	12.0
Customer Parking	13	14.1
<b>TOTAL</b>	<b>92</b>	<b>100.0</b>

When the vendors were asked if they knew they were operating in SDHPT right-of-way, forty-five responded in the affirmative. Interestingly, twenty-eight vendors indicated that they have received approval from some source to operation at their location. Twelve vendors said that they had been asked to move from the site (6 by DPS, 2 by SDHPT, 1 by property owner and 3 did not specify the person or agency).

## 5.6 Summary

- An extremely wide variety of products are being sold along Texas highways.
- Over half of the vendors interviewed used signs in the ROW for advertisement.

- 51% of the vendors have been operating at the same site longer than a year.
- Twenty-three vendors served more than 50 customers a day, indicating highly profitable businesses.
- Reasons for site selection vary widely with heavy traffic being the most frequent response.
- Seventy-six percent of the responding vendors knew they were operating on the ROW.
- Almost half of the vendors interviewed received some form of prior approval to locate at their sites.





## 6.0 Special Considerations

### 6.1 Introduction

The purpose of this section is to document some of the special circumstances, related observations, and conflicting policies and procedures encountered while conducting field interviews with roadside vendors. Section 6.2 summarizes some policies which selected cities have adopted to regulate vendors within their jurisdiction. Section 6.3 is a discussion of some permit requirements necessary to conduct business, including activities by roadside vendors. The last subsection is a case summary describing activities of roadside vendors in the vicinity of Garner State Park. and presents some primary concerns which relate directly to vendors using highway rights-of-way for business activity.

### 6.2 Vendor Permits from Cities

During the conduct of field interviews with roadside vendors, it was determined that certain policies have been adopted by various cities attempting to regulate vendors and merchants using streets, sidewalks, rights-of-way, etc. in their jurisdiction. Since this aspect was not fully anticipated at the inception of the study a separate study phase was developed to gather information from several large cities across the State to compare these regulations and policies. Information presented in this section is abstracted from documents provided by these cities. Amarillo, Austin, Beaumont, Corpus Christi, Dallas, Fort Worth, Houston, The analysis of the documentation provides the SDHPT with information relating to city management of vendors and itinerant merchants, particularly existing policies and procedures. A summary of the major features of the various permits received is presented in Table 6.1.

Of the nine cities providing information, seven require a permit for vendors operating within the city limits, regardless of the products sold. Dallas prohibits all vending activity within the city limits. In 1986, Beaumont removed all legislation regulating those vendors which do not sell prepared food products.

In most cities, the tax department is responsible for the issuance of permits. In others however, the applicant is required to obtain permission from several different departments, such as comptroller, police, health, food services, and (in Lubbock) the Better Business Bureau. The cost of the permits range from \$15 to \$150, usually commensurate

TABLE 6.1 SUMMARY OF PERMIT CHARACTERISTICS FROM SELECTED CITIES

CITY	VENDOR PERMIT REQUIRED	RESPONSIBLE DEPARTMENT	COST OF PERMIT	EXPIRATION PERIOD	LOCATION REQUIREMENTS *	SPECIFICALLY PROHIBITS STATE ROW USE
AMARILLO	YES	CODE ENFORCEMENT	\$25	VARIABLE	* PP/WPO	NO
AUSTIN	YES	CITY CLERK	\$150	1 YEAR	PP/WPO/I	YES
BEAUMONT	ONLY FOR FOOD PRODUCTS	FOOD SERVICES	N/A	N/A	NONE	NO
CORPUS CHRISTI	YES	COLLECTIONS, HEALTH		30 TO 90 DAYS	PP/WPO/RR/I	NO
DALLAS	ALL VENDING PROHIBITED	N/A	N/A	N/A	N/A	N/A
FORT WORTH	YES	TAX	\$60	40 DAYS	PP/WPO/RR	NO
HOUSTON	YES	TAX	\$50	1 YEAR	NONE	NO
LUBBOCK	YES	BUILDING INSP., POLICE, HEALTH, BETTER BUSINESS, COMPTROLLER	\$50	30 DAYS	PP/WPO	NO
SAN ANTONIO	YES	TAX, POLICE	\$15 \$30	120 DAYS 1 YEAR	LISTS PROHIBITED LOCATIONS	YES

\*  
 PP = Private Property  
 WPO = Written Permission of Owner  
 I = Liability Insurance  
 RR = Restroom facilities must be available

with the length of time the permit is valid. Expiration periods vary between 30 days and 1 year.

All but one of the seven cities which provide vendor permits also make some effort to limit where a vendor may or may not locate. Five of these cities require the vendor to set up their operations on private property and require written permission from the property owner prior to the issuance of the permit. Two of these cities require that restroom facilities be available on the property, also, with written permission from the owner authorizing their use. Two of the five cities require proof of liability insurance in order to secure a permit.

The use of state rights-of-way is specifically prohibited in one city, and another provides a list of locations which are off-limits to vendors. Included in this list are state right of ways within the city limits. While most of the permits do not specifically forbid right-of-way use, requiring vendors to locate on private property should achieve the same result.

### 6.3 State Regulatory Agencies

Information was requested from State agencies which were determined to have policies concerning roadside vendor activity. Two agencies which responded were the Texas Department of Agriculture (TDA), and the Office of the Comptroller.

According to the TDA, a vendor needs no license to handle fruits and vegetables if the producer handles or deals exclusively in the producer's own products. However, the vendor must have a license if he is not the producer of the produce, and if produce sales comprise 75 percent or more of the retailer's total sales.

The Weights and Measures Division TDA requires any weight or measure device to be inspected if it is used in proving the weight or measure of any item. There are no special provisions given for vendors on the State rights-of-way.

The Office of the Comptroller requires all businesses in Texas to complete a sales tax application. The application requires the applicant to provide the location of the business, referring to the street and number, or **directions** to the business. These three items, while not endorsing roadside vendors, regard them no differently than any other business operation. Also, neither the TDA nor the Office of the Comptroller are police agencies. As long as the applicant meets their requirements, the necessary permits and

licenses will be issued. That the business conducts its operations on SDHPT rights-of-way is not presently their concern.

#### 6.4 Garner State Park Interview Summary

While conducting field interviews it was determined that roadside vendors in the Garner State Park area of Uvalde County are a serious problem during the summer months. The purpose of this section is to document certain observations and findings regarding roadside vendors in Uvalde County, Texas. Researchers were sent to the area in late May, 1988. Interviews were conducted with a Garner State Park official and a local business proprietor. The following was taken from these interviews.

The Garner State Park area has long been known for its scenic hills and rivers. Tourists travel great distances to camp and float the Frio River. Local businesses provide for the needs of these tourists by selling groceries and T-shirts, and renting inner tubes. Due to the fact that Garner State Park is a considerable distance from any town, merchants in the immediate area of the Park rely primarily on tourists for their revenue.

For the past few summers, roadside vendors have brought trucks and vans full of inner tubes, T-shirts and other items to the Garner State Park entrance and conducted business on state property. These vendors have caused a wide variety of problems for park officials, local merchants, and citizens.

Since the vendors have been operating adjacent to the Park entrance, litter has increased. Litter cleanup is expensive and takes time away from other, more productive duties of park employees. Because the vendor does not own the land, there is self perceived need to clean up the area.

The river banks and abutting property along the river are privately owned. Local merchants rent inner tubes to tourists who float the river. Because the merchants are friends and neighbors of the property owners, they try to protect the property of others and preserve the beauty of the Park. Merchants attempt to keep their customers from trespassing on the property of others. When tubes are rented, the merchants explain in great detail where the tourist is permitted to stop and picnic. Some merchants go so far as to count the number of soft drink cans the customer had when he began his trip and require the same amount to be brought back to pick up his deposit. Again, since roadside vendors are not local residents, they make no such effort to protect the property of others.

It is contended that roadside vendors have unfair advantage over local merchants. The itinerant businesses are on public property. Yet they pay no rent or property tax, while occupying a piece of land which is much more valuable than that which local merchants must pay to use. There is not a more prime business location for selling to park visitors than that wide shoulder at the Garner State Park entrance. If, however, a vendor wished to operate within the park, the State would require 25 percent of the revenue as rent on the property. Outside the jurisdiction of the park, a similar business can operate and avoid this expense.

A local merchant must obtain a permit from the county at a cost of \$125 to place an advertising sign on private property. This expense is in addition to the cost of the sign and any necessary permission of the property owner. The established business is subject to a fine if a sign is put up without a permit. The roadside vendor, on the other hand, needs no permit to place signs along the roadway.

Many roadside vendors do not collect and pay sales tax. This gives the vendor an automatic seven percent advantage over legitimate businesses. It was indicated to the interviewers that vendors who do collect sales tax in Uvalde County turn those dollars over to Bexar County. Uvalde County residents do not like their tax dollars to be spent elsewhere.

The costs which roadside vendors have imposed on the citizens of Uvalde County are much greater than most people realize. Not only must the costs of trash cleanup, destruction of property, and traffic safety be considered, but also the economic impact of the loss of local businesses. When local merchants can no longer compete with these roadside vendors who have no overhead costs, they must shut down.



## 7.0 Alternatives

### 7.1 Introduction

This section presents and discusses several alternatives available to SDHPT for managing roadside businesses. The alternatives presented include administrative, cooperative, and legislative actions. Some could be implemented in a relatively short period, while others would require a longer time. Some of the alternatives may not be politically viable and could confront latent opposition from certain sections of the State.

### 7.2 Do Nothing

As with many policy type decisions, the alternative of doing nothing at this time is acceptable. Roadside businesses are not of major concern to most people or areas of the State. SDHPT receives complaints from various sectors regarding these operations, and one of the primary sources is other established businesses (21.8 percent). Only 69 of 280 SDHPT surveys (24.6 percent) indicated the source of complaints as the general public. Although the SDHPT encounters problems and incurs costs due to these businesses there is little if any evidence to indicate public concern. The fact that these businesses operate and are apparently successful tend to indicate public acceptance.

### 7.3 Increased Law Enforcement: Without Additional Legislation

Information presented in Section 4.0 shows that DPS officers view roadside businesses as safety problems. However, only 25 percent of the respondents indicated that they issue citations when the businesses are located in "No Parking" zones. Also, more than one-third respondents to the SDHPT survey indicated that they never ask DPS officers to remove these businesses from highway right-of-way. Less than 15.0 percent ask DPS to remove a business even if it is operating in a "No Parking" area.

Certainly law enforcement officers have priorities higher than dealing with roadside businesses. However they may not be aware of or recognize the problem these operations cause SDHPT. An increase in communications between SDHPT personnel and DPS officers could make them aware of the problems and safety issues.

The issuance of citations will be meaningless if local courts do not view them as serious violations. If the courts do not act, increased enforcement will not be effective. It may be necessary for SDHPT officials at the District and county level to work with the courts in this area for an increase in enforcement to be a successful deterrent to businesses operating in the rights-of-way.

#### 7.4 Permits and/or Licenses

Since the Department has authority to lease certain highway rights-of-way not being used for highway purposes a procedure to permit or license roadside businesses to specific sites would enable SDHPT to control these operations and produce revenue. While this alternative does not remove businesses from the right-of-way, it does enable SDHPT to confine these activities to sites where it is determined that they present no safety problem and where roadside damage can be minimized. Also a permit or license policy can be the basis for prohibition. The Department would be able to exercise some control over the activities, structures, and parking at these sites. However, the use of permits or permits can be an administrative burden. In addition, such a policy may meet resistance from those businesses which have heretofore operated "rent free" on highway rights-of-way and at sites of their selection. Finally, such a policy would tend to "institutionalize" roadside businesses, which may not be in the best interest of Texas.

#### 7.5 Use of Existing Controls

Information presented in Section 3.0 indicates that the product categories of used automobiles and fireworks are considered by SDHPT personnel to have a high severity index. As discussed in Section 2.0, however, there are currently laws and regulations directed to the use of highway rights-of-way by these business types.

- Texas Revised Civil Statutes, Article 6686 and implementing regulation in 23 TAC § 17.60 *et seq.* regulate eligibility to use dealer license plates, and, in setting standards for place of business, prohibit using any part of right-of-way for display of vehicles.

§ 17.69(3) states that automobile dealers must have an off-street display area. It further states that the display area cannot be on a public easement, right-of-way, or driveway.



§ 17.70(2) states that the dealer license may be canceled if the dealer fails to conform to regulations pertaining to display space requirements.

**This regulation was adopted March 28, 1986 and SDHPT personnel at the county level may not be aware of its existence.**

- Texas Insurance Code, Article 5.43-4 authorizes the State Board of Insurance to promulgate rules to be administered by the State Fire Marshal.  
28 TAC § 27.417(1) states must furnish parking off the highway.

**SDHPT personnel may not be aware that retail fireworks stands are subject to the authority of the State Fire Marshal.**

The judicious use of these laws and regulations should reduce the incident of right-of-way use for displaying automobiles and customer parking at firework stands. The threat of loss of license or permit to do business and the associated economic impact could significantly reduce right-of-way use by these businesses. SDHPT personnel at the District and county level should be made aware of these tools.

## 7.6 State Agencies and Local Jurisdictions

In Section 6.0 information was presented on local city ordinances regulating vendors within their jurisdictions and the issuance of licenses and permits by other state agencies to individuals and businesses that ultimately locate on highway rights-of-way. It may be possible by working with these agencies and cities to significantly reduce the number of businesses operating within the right-of-way.

In numerous areas, SDHPT cooperates with cities and other agencies to solve problems and achieve common goals. Cooperation with these groups in the control and/or removal of businesses using SDHPT rights-of-way appears to be a potential and yet low-key solution. This alternative if successful, reduces the need for legislation, can be implemented relatively soon, and can be used selectively.

### 7.6.1 Local Jurisdictions

In only two of the city ordinances reviewed were vendors specifically prohibited from SDHPT rights-of-way. Only one city goes so far as to enumerate prohibited roadways. SDHPT could work with the administration of those jurisdictions where the problem of roadside businesses is most acute. This would make the cities aware of the problem caused

by these operations and the safety hazards they present. Such information and cooperation may help to develop local ordinances which met SDHPT objectives.

#### 7.6.2 State Agencies

Some state agencies have a tertiary role in the problem of businesses operating in the right-of-way. These are state agencies which license, permit, control, and regulate their operations. Businesses, that do not hesitate to locate on SDHPT property, would not consider operating without the necessary licenses and permits required and issued by other state agencies. Currently, these permits are issued without any determination by the issuing agency that the business is operating on public right-of-way.

In addition to the role of the State Fire Marshal, which has been discussed, the following agencies were found during the course of this study to have some relationships with roadside businesses. The Comptroller of Public Accounts requires all businesses in Texas to complete a sales tax application form and issues sales tax permits. Many of the roadside businesses visited by the study team had these permits prominently displayed, as required by law.

Weight and measure devices (scales) are periodically inspected and certified by the Department of Agriculture. In addition, businesses must have a license to sell fruits and vegetables unless they are the producers of the items.

Department of Health certify and issue certificates to businesses handling and selling food items. Mobil shrimp dealers and roadside barbecue stands are subject to Department of Health standards.

The agencies which issue licenses and permits to these businesses have no responsibility to protect SDHPT rights-of-way from unauthorized use. Their responsibility is to insure that all businesses comply with the laws they are charged to administer and enforce. Unless it is brought to the attention of the agency administrators, they are probably unaware that permits are issued to businesses operating without permission on SDHPT rights-of-way.

SDHPT administration may want to consider the alternative of working with these state agencies as a means of protecting its right-of-way. Penalties for violation of some state agencies regulations are so severe that few business operators fail to comply. That these businesses secure a tax permit is one indication of the respect they have for the power

of the Comptroller of Public Accounts. If agencies are able and willing to refuse to issue a permit or license to businesses operating in the right-of-way, many current vendors might reconsider their location decision.

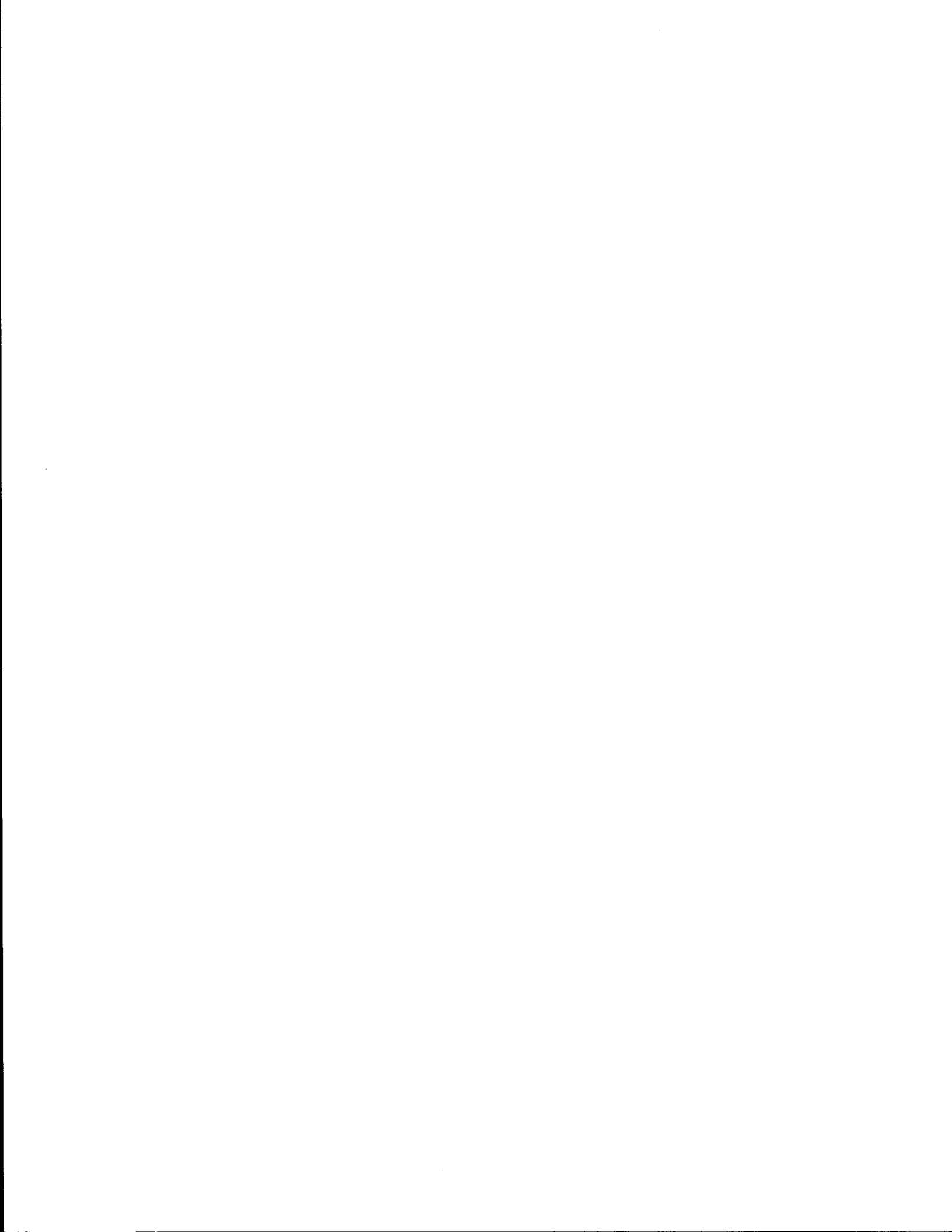
## 7.7 Legislative

A legislative alternative was considered in 1987 when HB 1480 was introduced to the Legislature. This legislation would have prohibited the sale of any type of products on highway rights-of-way in counties having a population of more than 2.2 million. If similar legislation is introduced next session, SDHPT may consider including a prohibition regarding advertising signs in the right-of-way, also.

The findings of the SDHPT survey presented in Section 3.0 indicate the businesses operating in the right-of-way can be found in practically every county in Texas. This is not a problem confined to urban counties, but is instead a highway system wide problem. The problem was, however, shown to be more acute in major MSA counties.

The legislative alternative has basically two options - urban only or Statewide. If the statewide option is selected, restrictions on individuals selling their own home grown produce (fruits and vegetables) may create concern in rural areas. Should only urban counties be included in the legislation damage to the right-of-way in rural counties will continue, and, more significant, safety hazards and the potential for an accident will not be eliminated.

For legislation to be effective it must be enforceable and enforced. Enforcement is the responsibility of DPS, and their input is necessary. In addition, penalties should be structured to eliminate these businesses from the right-of-way rather than relocate them to another right-of-way site.



## Appendix



Please circle or check appropriate response.

1. Do vendors use highway ROW in your state for business purposes?

- a. Yes, with authorization  
 b. Yes, without authorization  
 c. No  
 d. Comment \_\_\_\_\_

2. Is vendor use of ROW sanctioned?

- a. Yes, by state law  
 b. Yes, by departmental policy  
 (If a or b, please provide copy of documentation)  
 c. No  
 d. Comment \_\_\_\_\_

3. Are vendors authorized to conduct business at a specific location by a permitting or similar process?

- a. Yes, by permit  
 b. Yes, by other  
 (if a or b, please provide copy of documentation)  
 c. No  
 d. Comment \_\_\_\_\_

4. Do vendors on ROW cause problems for you in these categories:

- |                         |     |    |
|-------------------------|-----|----|
| a. Operational problems | YES | NO |
| b. Maintenance problems | YES | NO |
| c. Safety problems      | YES | NO |
| d. Other problem areas  | YES | NO |
- (Specify) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Have any studies or surveys been conducted to document or analyze vendor use of ROW in your State?                      YES              NO

(If yes, please send a copy of the information or an appropriate reference).

6. Is unauthorized use of ROW subject to:

- |                      |     |    |
|----------------------|-----|----|
| a. Civil penalty?    | YES | NO |
| b. Criminal penalty? | YES | NO |
- (Please furnish copy of relevant legislation).

7. What agency(ies) enforce:                      Agency(ies)

- a. Civil penalties? \_\_\_\_\_  
 \_\_\_\_\_
- b. Criminal penalties? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8. Name, address, and phone number of person we may contact for additional information.

\_\_\_\_\_  
 \_\_\_\_\_

**QUESTIONNAIRE TO DISTRICT ENGINEERS**

District No. \_\_\_\_\_  
County Name \_\_\_\_\_

Contact Person \_\_\_\_\_  
Phone No. \_\_\_\_\_

1. Estimated number of ROW locations in county that roadside vendors use:  
(a) Regularly \_\_\_\_\_  
(b) Occasionally \_\_\_\_\_
  
2. Problems encountered by SDHPT due to vendors using ROW (check those that apply):  
(a) Litter \_\_\_\_\_  
(b) Vegetation damage \_\_\_\_\_  
(c) Pavement damage \_\_\_\_\_  
(d) Soil erosion and rutting \_\_\_\_\_  
(e) Safety \_\_\_\_\_  
(f) Please list any others \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. In the past 12 months, have you received complaints regarding roadside vendors from: (please check applicable sources)  
(a) Land owners \_\_\_\_\_  
(b) Established businesses \_\_\_\_\_  
(c) Customers \_\_\_\_\_  
(d) Motorist \_\_\_\_\_  
(e) General public \_\_\_\_\_  
(f) Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Are roadside vendors asked to move by SDHPT personnel?  
Yes \_\_\_\_\_ No \_\_\_\_\_ Depends on circumstance and/or location \_\_\_\_\_
  
5. In the past 12 months, have SDHPT personnel ask the DPS to remove roadside vendors from ROW?  
(a) Never \_\_\_\_\_  
(b) Only if in "No Parking" area with sign \_\_\_\_\_  
(c) Only if they cause traffic problems \_\_\_\_\_  
(d) Always \_\_\_\_\_
  
6. What kind of highways do roadside vendors usually use in your district? (check those that apply)  
(a) Two lane \_\_\_\_\_  
(b) Four lane \_\_\_\_\_  
(c) Four lane divided \_\_\_\_\_  
(d) Freeway with frontage roads \_\_\_\_\_  
(e) Freeway without frontage roads \_\_\_\_\_



7. Please describe the usual locations of three vendors in your district.  
(Use highway a number and milepost designation)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8. In the past 12 months, have there been any traffic accidents in which a roadside vendor was a cause, either directly or indirectly?

(a) Yes \_\_\_\_\_; (b) No \_\_\_\_\_; (c) Unknown \_\_\_\_\_; If yes, please provide number, location, and severity. \_\_\_\_\_

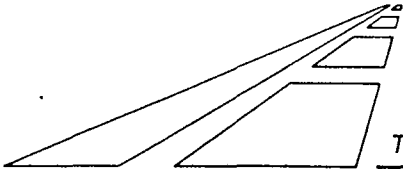
\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Please complete:

Products Sold	Number of Location in County	Severity of the Problem (Circle one)				
		No Problem	---	Severe	Problem	
A) Home Grown Produce	_____	1	2	3	4	5
B) Commercial Produce	_____	1	2	3	4	5
C) Fireworks	_____	1	2	3	4	5
D) Used Automobiles	_____	1	2	3	4	5
E) Food Products: (shrimp, barbecue, etc.)	_____	1	2	3	4	5
F) Commercial Items: (flags, dresses, etc.)	_____	1	2	3	4	5
G) Handmade Items	_____	1	2	3	4	5
H) _____ (others)	_____	1	2	3	4	5
I) _____ (others)	_____	1	2	3	4	5

10. Estimated man hours per month (average of last 12 months) spent by SDHPT personnel at ROW locations used by roadside vendors in following activities.

- (a) Litter cleanup \_\_\_\_\_ M/H per month
- (b) Repair of pavement and shoulder \_\_\_\_\_ M/H per month
- (c) Sign removal \_\_\_\_\_ M/H per month
- (d) Repair of vegetation and soil damage \_\_\_\_\_ M/H per month
- (e) Official sign repair/replacement \_\_\_\_\_ M/H per month
- (f) Other \_\_\_\_\_ M/H per month
- \_\_\_\_\_ M/H per month
- \_\_\_\_\_ M/H per month



HUMAN FACTORS DIVISION  
SUITE 510 JOHN R. BLOCKER BLDG.  
MAIN CAMPUS

Area Code 409  
Telephone 845 • 2736  
TexAn 857-2736

**Use of Highway Right-of-Way by Roadside Businesses and Itinerant Merchants --**  
Project 1191 for the Texas Department of Highways and Public Transportation  
**To Highway Patrol Sergeants:**

We at the Texas Transportation Institute are helping the Highway Department gain more knowledge concerning the safety aspects of private business use of the public roadside. We need any information you can give us concerning your experiences and those of your troopers with these types of activities in your patrol areas. Please take a few minutes to answer a few questions, and if any of your troopers have any information, have them fill out a questionnaire too.

1. Do vendors make any effort to touch base with your office before setting up their business?

( ) Often ( ) Sometimes ( ) Seldom ( ) Never

2. Do your troopers visit/check out vendors when they see them on the roadside?

( ) Often ( ) Sometimes ( ) Seldom ( ) Never

If they do visit them for official reasons, what are those reasons?

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3. In the past year, have any of your troopers had to **arrest** a vendor for something related to his business activity?

( ) Yes ( ) No

If YES, how many such incidents occurred in your area: \_\_\_\_\_

If YES, please tell us a little about these incidents: \_\_\_\_\_

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4. Do your troopers issue citations to roadside vendors if a Highway Department "NO PARKING" sign is in sight, or do they tell them to move to another (unsigned) location?

( ) Citation ( ) Tell them to move ( ) Unknown

5. Do you consider these vendors to be a safety hazard on the roadside?  
( ) Yes ( ) No  
Why, or why not?

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6. In the past year, have there been any accidents in your area in which a roadside vendor was a cause, either directly or indirectly?  
( ) Yes ( ) No  
If YES, how many accidents? \_\_\_\_\_  
Please attach copies of the accident reports, if they are available. If not, tell us how these accidents involved a roadside vendor:

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7. Do roadside vendors cause problems other than safety problems?  
( ) Yes ( ) No  
If YES, what kinds of problems, and for whom:

Problem	Who is Affected
_____	_____
_____	_____
_____	_____

Your Name \_\_\_\_\_

Office Location \_\_\_\_\_ Phone \_\_\_\_\_

We would welcome any specific information that you can give us; just attach it to this form, or give us a call:

Rodger Koppa, TTI (409)845-2736 or TEXANN 857-2736

Thank you very much!

FIELD OBSERVATION AND INTERVIEW FORM  
PROJECT 1191

Day and Date \_\_\_\_\_

Completed by \_\_\_\_\_

LOCATION OF VENDOR SITE:

County \_\_\_\_\_

Nearest Town \_\_\_\_\_; Within City Limit? Yes \_\_\_ No \_\_\_

Highway Number \_\_\_\_\_ Posted speed limit \_\_\_ MPH.

If not in town give distance & direction to town \_\_\_\_\_

ROADWAY DESCRIPTION AT VENDOR SITE:

Number of Lanes (check one)

Shoulder Type (check one)

- A) \_\_\_ 2 Lane
- B) \_\_\_ 2 Lane w/center turn lane
- C) \_\_\_ 4 Lane
- D) \_\_\_ 4 Lane w/median
- E) \_\_\_ 4 Lane w/barrier divider
- F) \_\_\_ 4 Lane w/center turn lane
- G) \_\_\_ \_\_\_\_\_

- A) \_\_\_ Paved
- B) \_\_\_ Gravel
- C) \_\_\_ Dirt
- D) \_\_\_ Grass
- E) \_\_\_ None
- F) \_\_\_ \_\_\_\_\_

Traffic control devices within 100' of vendor location: (check all that apply)

- A) \_\_\_ Stop sign
- B) \_\_\_ No Parking sign
- C) \_\_\_ Speed Limit sign
- D) \_\_\_ City Limit sign
- E) \_\_\_ "Warning" sign
- F) \_\_\_ Official information sign
- G) \_\_\_ Flashing Red light
- H) \_\_\_ Flashing Yellow
- I) \_\_\_ Traffic Light
- J) \_\_\_ Delineators
- K) \_\_\_ Historic Marker
- L) \_\_\_ \_\_\_\_\_

Does vendor obstruct or distract vision from traffic control devices?  
Yes \_\_\_ No \_\_\_ (describe)

\_\_\_\_\_

\_\_\_\_\_

VENDOR SITE PHYSICAL DATA: (check all that apply)

- A) \_\_\_ Litter in area
- B) \_\_\_ Apparent vegetation damage
- C) \_\_\_ Pavement damage
- D) \_\_\_ Soil erosion/ rutting
- E) \_\_\_ \_\_\_\_\_
- F) \_\_\_ \_\_\_\_\_
- G) \_\_\_ \_\_\_\_\_

SITE CHARACTERISTICS:

- A) \_\_\_ Grass
- B) \_\_\_ Gravel
- C) \_\_\_ Dirt
- D) \_\_\_ Parking Lot
- E) \_\_\_ \_\_\_\_\_

FACILITY CHARACTERISTICS:

- A) \_\_\_ Pickup Truck/Van/Panel Vehicle
- B) \_\_\_ Large Truck
- C) \_\_\_ Portable Trailer/Bar-B-Que Pit
- D) \_\_\_ Temporary Structure
- E) \_\_\_ Permanent/Semi-Permanent
- F) \_\_\_ \_\_\_\_\_

Estimated dimensions of selling area including tables/display area:     X      
 Is litter barrel present? Yes      No       
 Number of customers present       
 Is the vendor on private property? Yes      No       
 Is the ROW used for parking? Yes      No     

**VENDOR PRODUCT DATA: (check all that apply)**

- |                                             |                                                |
|---------------------------------------------|------------------------------------------------|
| A) <u>    </u> "Home Grown" produce         | F) <u>    </u> Fireworks                       |
| B) <u>    </u> "Commercial" produce         | G) <u>    </u> Handmade items                  |
| C) <u>    </u> Prepared food/ beverages     | H) <u>    </u> Used Autos                      |
| D) <u>    </u> Unprepared food products     | I) <u>    </u> Shrimp                          |
| E) <u>    </u> Commercial or Souvenir items | J) <u>                                    </u> |

Are advertising signs placed at vendor site? Yes      No       
 Are advertising signs placed on approach to vendor site? Yes      No       
 IF YES, CHECK APPROPRIATE DIRECTION AND LIST DISTANCES: (in tenths of miles)

EASTBOUND	NORTHBOUND	SOUTHBOUND	WESTBOUND
<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>

**OPERATOR INFORMATION:**

How long at this site                       
 Number of days per week            or weekends per month            at this site.  
 Normal business hours      AM to      PM.  
 Number of customers per day           

Reasons for site selection (check all that apply):

- |                                                   |                                                |
|---------------------------------------------------|------------------------------------------------|
| A) <u>    </u> Wide Shoulder                      | F) <u>    </u> Surrounding Vendors             |
| B) <u>    </u> Heavy Traffic                      | G) <u>    </u> Near Vendor's Home              |
| C) <u>    </u> Speed of Traffic                   | H) <u>    </u> Ease of Access                  |
| D) <u>    </u> Surrounding Businesses             | I) <u>    </u> Customer Parking                |
| E) <u>    </u> Site Attributes (shade trees, etc) | J) <u>                                    </u> |

Does vendor know he is on ROW? Yes      No       
 Did vendor obtain approval to locate at this site? Yes      No       
 If yes, from whom? A)      State B)      County C)      City D)      property Owner  
 Ever been asked to move? Yes      No       
 If yes, by whom? A)      DPS B)      SDHPT C)      Propert Owner D)                       
 Do other vendors operate at this site? Yes      No       
 If food products are sold, does vendor have any permits? Yes      No       
 If non-food product does vendor collect sales tax? Yes      No     

Average gross revenue per month:  
 A)      Less than \$500                      C)      \$1000 to 1500  
 B)      \$500 to 1000                        D)      More than 1500

**SKETCH OF VENDOR SITE:**

(include the following features in a sketch on this page)

Numbers on any pictures taken at site  
Directions (N,S,E,W)  
Arrow & distance to nearest town  
Approximate ROW boundries  
Sketch of roadway lanes & shoulders  
Median or divider  
Other roads, driveways, etc

Distance of vendor from roadway  
Distance of vendor from intersection  
Other vendors present  
Private property  
Parked vehicles  
Traffic control devices  
Other relevant information