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**NON-HIGHWAY IMPLICATIONS OF ROADSIDE VENDING  
ACTIVITY IN SELECTED TEXAS COUNTIES**

**FINAL REPORT**

**by**

**Steve Roop  
and  
Dock Burke**

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

**November, 1991**

# 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	centimetres	cm
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	centimetres squared	cm <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

## MASS (weight)

oz	ounces	28.35	grams	g
lb	pounds	0.454	kilograms	kg
T	short tons (2000 lb)	0.907	megagrams	Mg

## VOLUME

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>.

## TEMPERATURE (exact)

°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C
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## 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

## AREA

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

## MASS (weight)

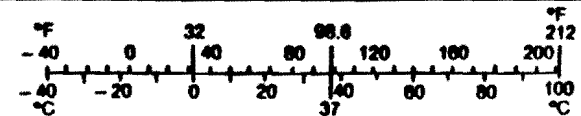
g	grams	0.0353	ounces	oz
kg	kilograms	2.205	pounds	lb
Mg	megagrams (1 000 kg)	1.103	short tons	T

## VOLUME

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>

## TEMPERATURE (exact)

°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F
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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 Department of Transportation and the Federal Highway Administration, sponsors of this study. Mr. Bob Blackwell, TxDOT D-18, served as Technical Coordinator on the project and provided invaluable assistance and support to the project staff. Mr. Bob Hodge, Mr. Ed Davis, and Mr. Joe Graff, deserve thanks for their support of the research effort. Mr. Roger Welsch, Deputy Director of Field Operations, and Mr. Robert Shaddock, General Counsel, provided important input during the production of the project's video documentary.

## **ABSTRACT**

**This report documents non-highway and non-maintenance issues associated with roadside vending within five high activity locations in Texas. The issues under investigation included an assessment of the extent of sales tax avoidance by itinerant merchants, public health and safety aspects of food sales from highway rights-of-way, an analysis of the impact of roadside vending on established (non right-of-way) businesses, and traffic and safety considerations from the perspective of local law enforcement agencies. In addition, a detailed analysis of selected roadside sites was conducted to document the observed effects of roadside selling activity on the highway right-of-way.**

## SUMMARY

This report documents the findings of a detailed examination of roadside vending operations at five selected sites within Texas. The research was undertaken to study and document unauthorized use of highway rights-of-way on state maintained roadways. The sites selected for study were identified as the counties or districts in which roadside vending is most prevalent. The analyses focused on important, non-highway or non-maintenance aspects of the roadside vending phenomenon. These aspects include sales tax evasion, public health and safety issues associated with food sales, and competitive impacts on established businesses. In addition to these facets of the roadside vending issue, the research investigated the degree to which roadside selling operations impact traffic safety and the law enforcement operations.

The results indicate that roadside vending is most likely not a significant source of revenue loss attributable to sales tax avoidance. Most vendors comply with state law and for those that may not, the amount of revenue is probably insignificant. Comptrollers indicate that audits of vendors are rare. This is due primarily to the inherent difficulty of locating vendors over prolonged periods of time.

The study of public health regulations indicate that State of Texas health guidelines cover the food production activities of roadside merchants preparing and selling food to the public. In addition, individual counties can formulate health requirements that compliment or exceed the state statutes. Three of the five counties studied during this research have issued additional guidelines.

Established businesses operating in proximity to roadside vendors were surveyed to assess the effects on business operations. The results revealed that some businesses feel the added pressure of what they consider "unfair competition." Most respondents supported increased regulation or taxation and considered the "free rent" enjoyed by itinerant merchants on state maintained right-of-way a significant business advantage.

Interviews with local law enforcement suggest that roadside vending is not considered a priority problem among sheriffs departments or among local police. Those contacted indicated that traffic safety issues generated by vending activity in the right-of-way, while a concern, were not of sufficient frequency or severity to warrant additional attention from local law enforcement

## **IMPLEMENTATION STATEMENT**

The findings of this investigation suggest that vending within Texas highway rights-of-way is most prevalent and concentrated in the major urban centers of the state. There is ample observational evidence to suggest that significant physical damage is caused by vendors and their patrons to the pavement edge, rights-of-way, and adjacent property. This damage results in additional labor and materials devoted to highway right-of-way maintenance by the Texas Department of Transportation. There is evidence to suggest that roadside vending creates additional hazard to the motoring public and that uncontrolled vehicle activity on the right-of-way increases the potential for accidents. The alternatives for improved control of the roadside vending issue range from new legislation banning sales activity from Texas highway rights-of-way, to leasing space within selected locations designated as "enterprise zones."

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# UNAUTHORIZED USE OF HIGHWAY RIGHTS-OF-WAY

## 1.0 INTRODUCTION

### 1.1 Background

Traditionally, motorists have had the opportunity to purchase fresh farm products from fruit and vegetable stands along Texas highways. The merchants who sell these goods are usually the producer, selling their excess produce directly to motorists. When the production season ends they most often relinquish their location within the highway rights-of-way. This type operation provides a convenient method for producers to dispose of excess production, as well as providing another source of income to farmers, and fresh fruits and vegetables to motorists.

Over the past several years, a new type of roadside merchant has appeared on Texas highway rights-of-way. In contrast to the seasonal nature of the produce vendor, these new vendors have taken on a degree of permanency, setting up their operations on a regular basis at the same location. At present the Texas Department of Transportation (TxDOT) has limited recourse in dealing with itinerant merchants located and doing business within highway rights-of-way. The TxDOT, 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, or permit these activities.

Operating a business within the highway rights-of-way may not be in the best interest of the TxDOT, the traveling public, or even the 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 risk for accidents probably increases at the locations selected by roadside businesses. A secondary issue is that these merchants are using state property rent free, thereby reducing their costs compared to competing firms operating off the rights-of-way.

This research gathered data from a number of additional sources, including direct observation of roadside vending sites. Data was collected from health officials within the study counties on county health regulations relating to roadside food sales. Interviews were conducted with comptrollers, county sheriff departments and municipal police to document sales tax avoidance and traffic safety issues respectively. A structured survey was developed and used to gauge the affects of roadside vending on established businesses. Finally, a video documentary was developed to document the salient features of the roadside vending issue and to use in communicating with legislative and civic groups.

#### 1.4 Report Organization

This report is organized into nine sections and follows the order of the tasks in the project work plan. Section 2.0 discusses the selection of counties for in-depth evaluation, and Section 3.0 provides detailed information on the characteristics of the vendor sites identified and evaluated for this portion of the study. The impacts of roadside vending operations on established businesses are presented in Section 4.0. Section 5.0 looks at the various tax implications of roadside vending, from permitting requirements to enforcement. Section 6.0 presents the findings of a detailed analysis of public health issues as they pertain to the selling of food products by itinerant roadside merchants. Section 7.0 reviews the traffic safety issues surrounding roadside selling operations from the perspective of affected county sheriffs departments and municipal police. Finally, Section 8.0 reviews the production and content of the video documentary depicting the range of issues associated with unauthorized use of highway rights-of-way.

## **2.0 COUNTIES SELECTED FOR IN-DEPTH EVALUATION**

### **2.1 Selection Criteria**

Working in conjunction with TxDOT maintenance personnel, five counties were selected for study. The criteria for selection was a demonstrated, high-level of roadside vending activity. The previous TTI research on roadside vending clearly indicated that a disproportionate amount of roadside selling activity takes place in urban settings. Site selection was, therefore, a relatively straight forward process, beginning with the largest urban county in the state, Harris County, and working through other appropriate candidate locations. The five counties selected for study were Harris, Dallas, Bexar, Travis, and Angelina.

Physical size, population, and the economic base of a county are three factors that may contribute to the relative prevalence of roadside vendors. Sections 2.2 through 2.6 describe some of the pertinent characteristics of the target counties.

### **2.2 Harris County**

Harris County is located in the southeast part of the state. Harris County covers 1,734 square miles and has a population of 2.8 million people. The city of Houston (pop. 1,888,337) is the county seat of Harris County. Houston is the largest Texas city and the fourth largest city in the United States. Houston ranks first nationally in the manufacture of petroleum equipment, fertilizers, pesticides, agricultural chemicals and oil and gas pipeline transmission.

Harris County is a very industrialized county with more than 3,500 manufacturing plants. It has the largest concentration of petrochemical plants in the U.S., and can be considered a center of international business activity. Harris County is also known for its space, energy and medical research. More than 200 firms have corporate headquarters, divisions, or subsidiaries located in Houston.

### **2.3 Dallas County**

Dallas County is located in the north central part of the state. Dallas County spreads out over 880 square miles and has a population of 1.9 million people. The city of Dallas (pop. 1,061,850) is the county seat of Dallas County. Dallas is the second largest city in Texas and

Presidential Library and the main campus of the University of Texas are popular sites for visitors.

## **2.6 Angelina County**

Angelina County is located in the middle eastern section of Texas and spreads over 807 square miles. The population of Angelina County approaches almost 70,000 people. Lufkin (pop. 30,616) is the leading manufacturing center of the county as well as the county seat.

Along the eastern border of Angelina County lies Lake Sam Rayburn, and the Angelina National Forest occupies the southeastern portion of the county. Angelina county is the leading timber-producing county in Texas. Over 70.0% of the land in Angelina County is used for commercial forestry.

### **3.0 DETAILED STUDY OF SELECTED VENDOR SITES**

#### **3.1 Introduction**

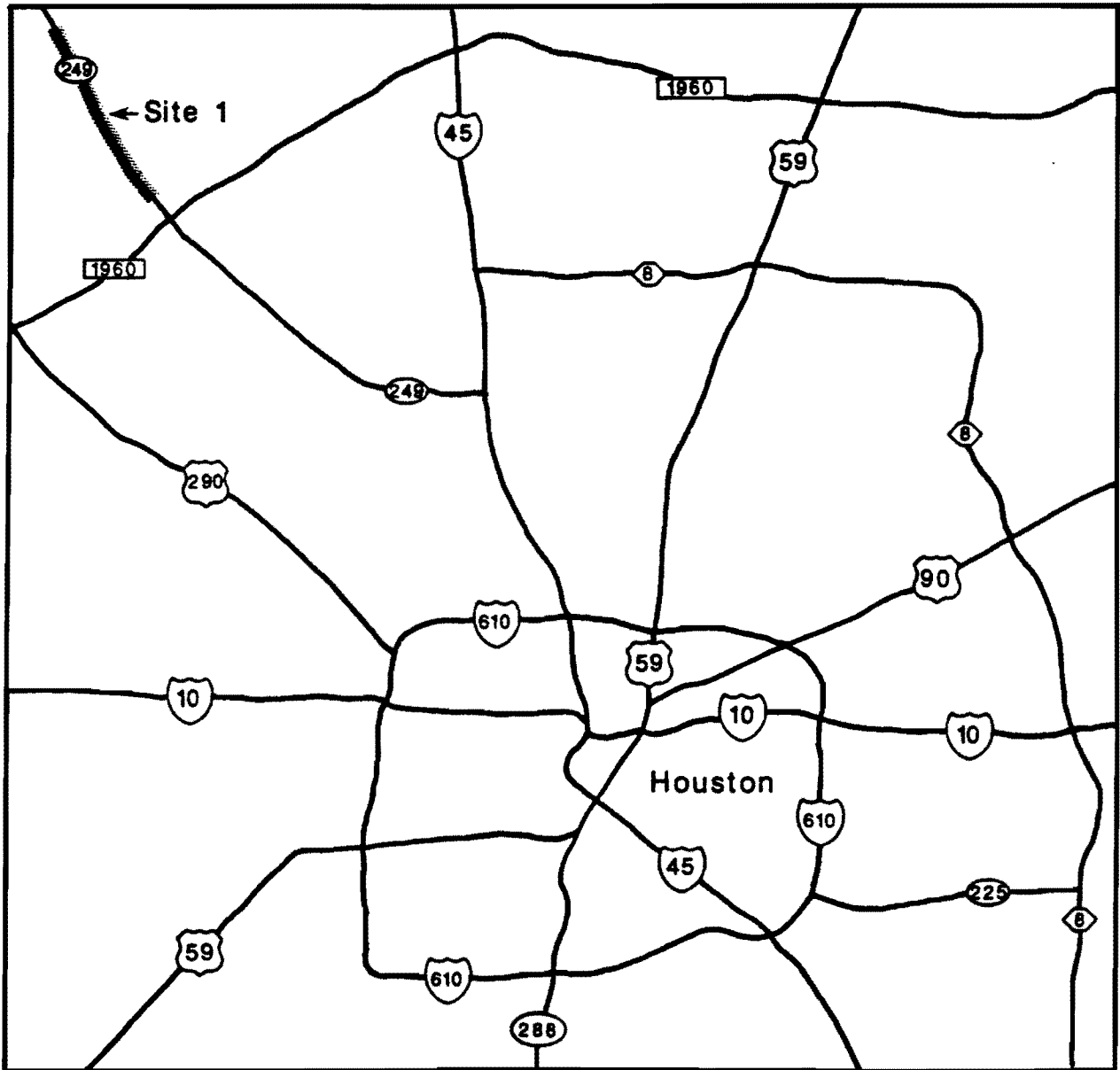
Eleven vendor sites were surveyed from the five counties selected in Section 1.0. Candidate sites were provided by TxDOT district maintenance personnel based on their knowledge of the county and the historical level of roadside vending activity. Table 3.1 lists the candidate sites.

Each vendor location was visited by the project staff and analyzed relative to five criteria: (1) type of items sold, (2) the degree of traffic congestion, (3) the potential for accidents, (4) the volume of business, and (5) the extent of highway right-of-way damage. The surveys were conducted during weekend periods in order to evaluate the sites during peak levels of both vendor and customer activity.

#### **3.2 Harris County**

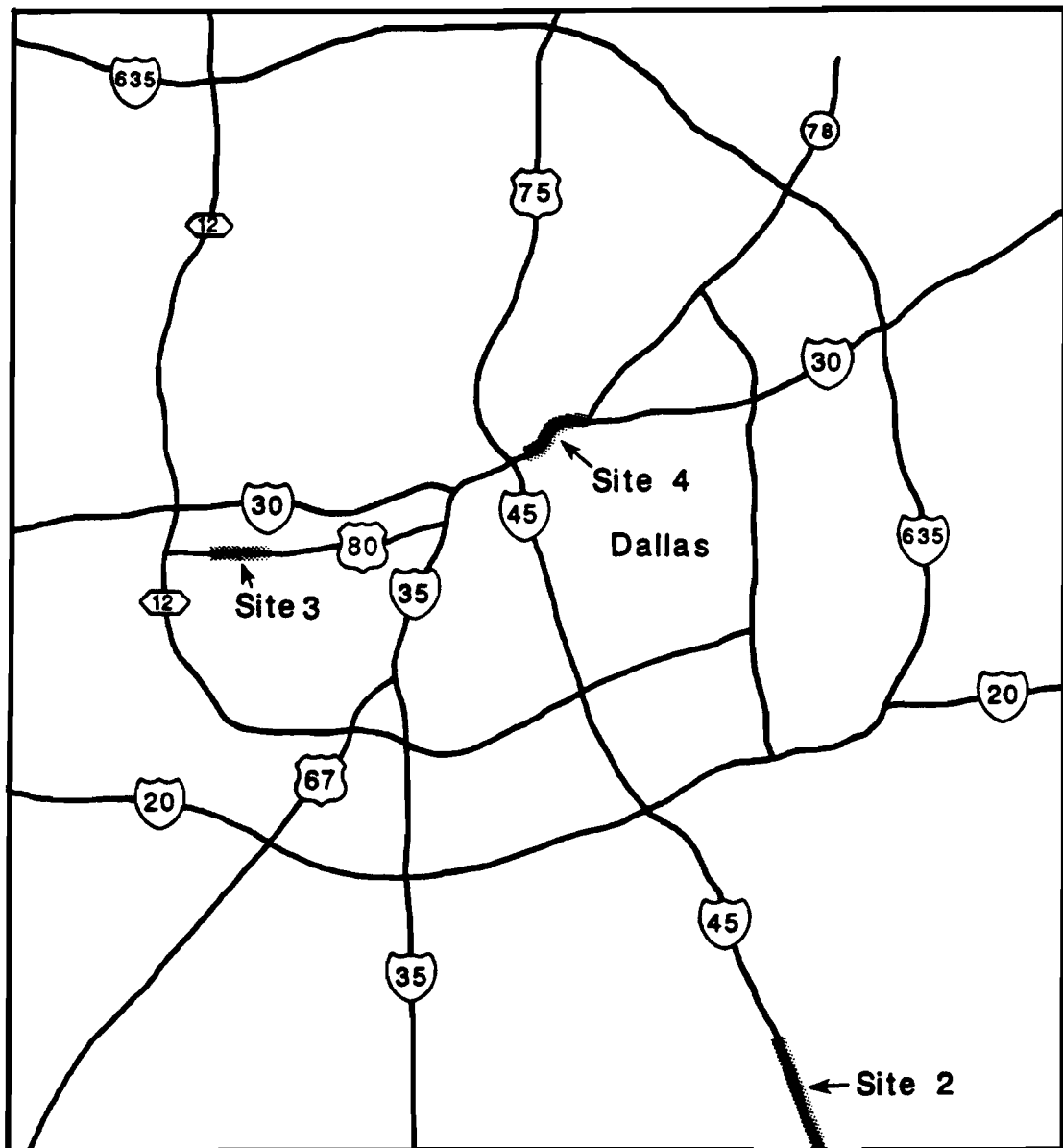
One site was chosen for detailed evaluation in Harris County. The site is located on Highway 249, north of FM 1960. The location is a five mile strip along the highway near the town of Kohrville, northeast of Houston (see Figure 3.1). Vending activity was taking place along both sides of the highway, which is a four-lane, undivided roadway with a center, left turn lane. The items sold include farm produce, commercial items, used automobiles, food products, handmade crafts, fireworks, and pets. The 1990 estimate of Average Annual Daily Traffic (AADT) was in excess of 40,000 vehicles per day, a large volume of traffic relative to our other study sites. In fact, this was the most active location visited by the project staff, considering traffic volume in conjunction with vendor activity. The accident potential is rated extremely high due to AADT, the high volume of business along the right-of-way, and the speed of passing traffic, estimated in excess of 60 miles per hour. Right-of-way damage consists of shoulder destruction, rutting from vehicles, and the destruction of grass and pavement. Table 3.2 illustrates the findings.

Figure 3.1 - Houston Roadside Vendor Locations



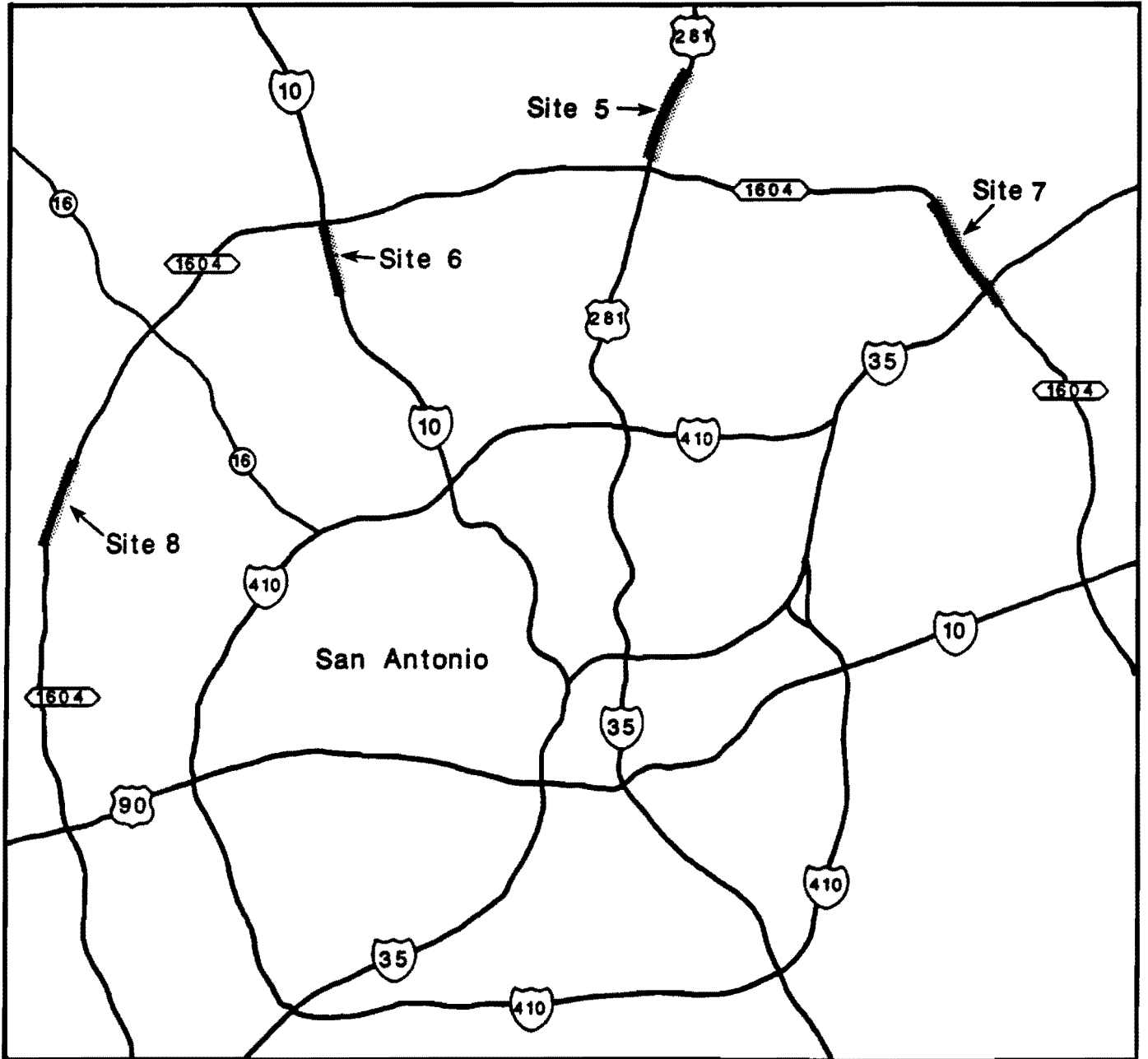
and egress. All forms of right-of-way damage are present, including severe rutting.

**Figure 3.2 - Dallas Roadside Vendor Locations**





**Figure 3.3 - Bexar County Roadside Vendor Locations**



moderate. Business volume at this site was also moderate. The right-of-way damage includes shoulder damage, rutting, grass destruction, and pavement damage.

**Table 3.8 - Site 7 Analysis - Bexar County**

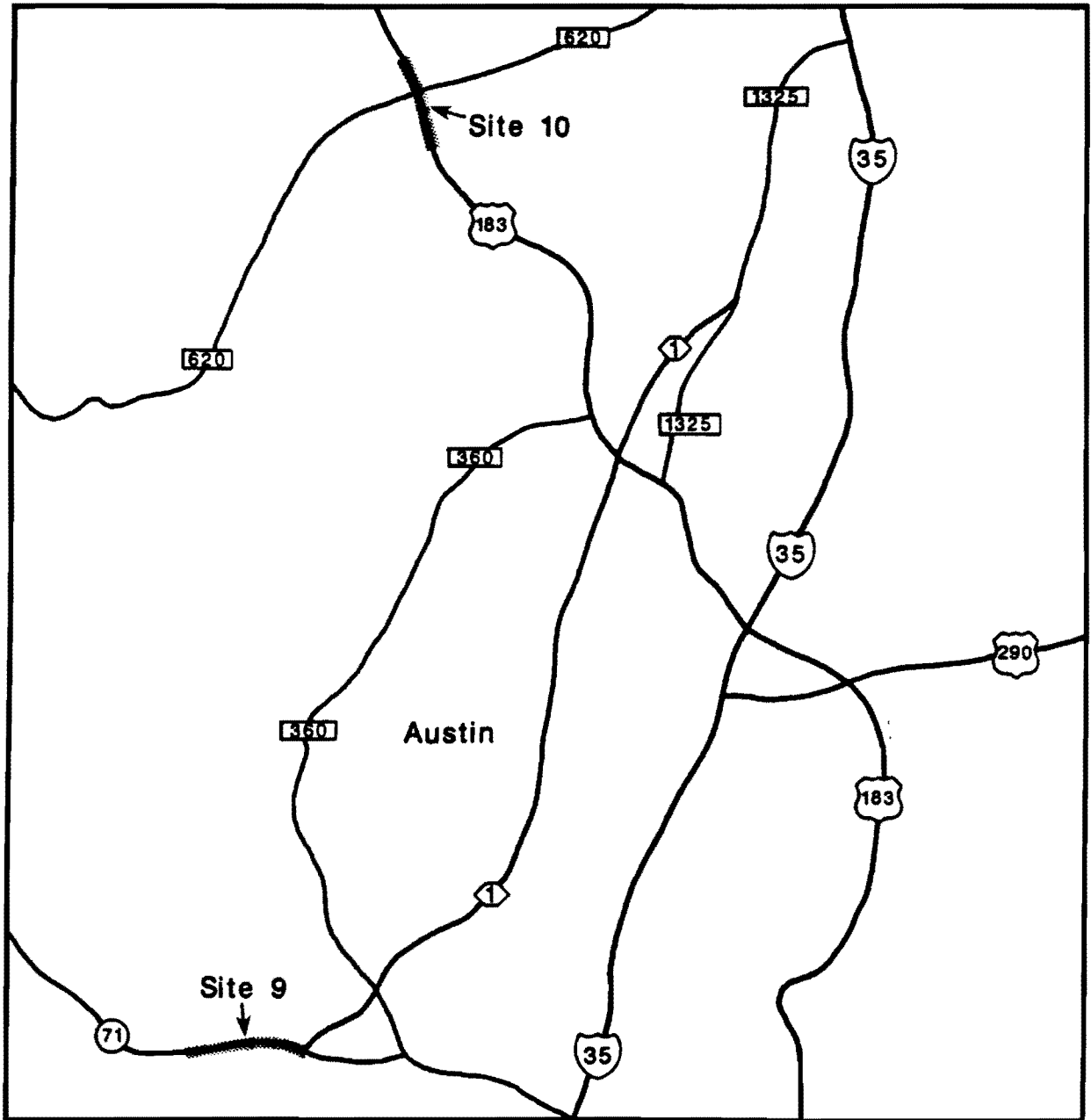
<b>Site 7: Bexar County on IH 35</b>	<b>Criteria</b>
Items Sold	produce, commercial, food, & crafts
Traffic Congestion (AADT)	moderate to light (11,700)
Accident Potential	moderate
Volume of Business	moderate
Right-of-Way Damage	shoulder, grass, & pavement destruction

The final site visited in Bexar county, Site 8, was located on FM 1604 between Bandera Road and Highway 471, on the northwest side of San Antonio. The location consisted of a produce stand selling vegetables and fruit. Traffic in this area was light with AADT at 8,600. Traffic congestion and business volume was low, as was the assessment of accident potential. The roadway shoulder and adjoining pavement appeared damaged, but no rutting was discovered in the surrounding area. Minor grass damage was observed at the site.

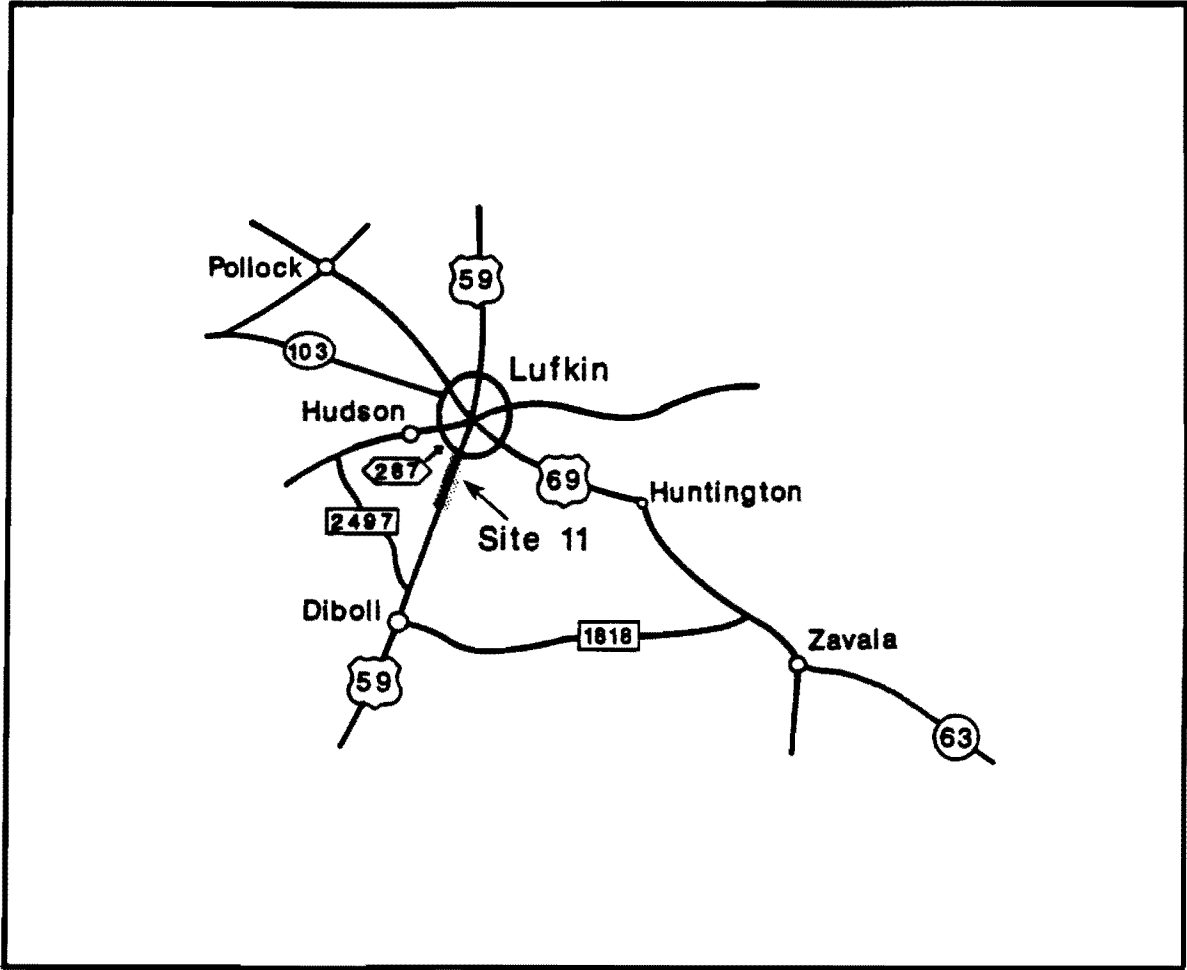
**Table 3.9 - Site 8 Analysis - Bexar County**

<b>Site 8: Bexar County on FM 1604</b>	<b>Criteria</b>
Items Sold	farm produce
Traffic Congestion (AADT)	light (8,600)
Accident Potential	low
Volume of Business	low
Right-of-Way Damage	shoulder, grass, & pavement destruction

Figure 3.4 - Travis County Roadside Vendor Locations



**Figure 3.5 - Angelina County Roadside Vendor Locations**



## **4.0 IMPACT OF VENDOR OPERATIONS ON ESTABLISHED BUSINESSES**

### **4.1 Survey**

Owners, managers, or operators of established businesses in close proximity to roadside vendors were surveyed via a structured questionnaire in order to document the various impacts of roadside vending on their business. Both competitive and non-competitive businesses were surveyed at sites identified from within the five target counties.

Each high activity site from our sample of counties was visited during the month of July, 1991. Businesses were selected for study based on physical proximity to roadside vendors. In order to increase the detection and sampling of appropriate business-vendor contention, business contacts were made during peak, weekend periods. Direct contact was established, whenever possible, with owners, managers, or on-site operators of the business. A TTI researcher explained the nature of the study, introduced the survey, reviewed the instructions and the questionnaire document, and provided the respondent with a return envelope with which to send the completed document to TTI for analysis.

The survey contained 3 sections. Section 1 requested general background information on the type of business, its location, and about the person filling out the questionnaire. Section 2 requested input on the impact of roadside vendors on the operation of the business. Section 3 gathered information on the actions established merchants have taken or requested regarding roadside vendors, as well as a request for direct suggestions, comments, or opinions. A copy of the business questionnaire is in Appendix A.

### **4.2 Description of Surveyed Businesses**

Fifty-one established businesses from within and around the study sites received TTI questionnaires. Fifteen businesses completed and returned questionnaires for a return rate of 29.4%. It should be noted that, with a few exceptions, roadside vendors did not seem to cluster around established business locations. In fact, more often than not, the vendors seem to locate at sites away from established businesses, possibly to avoid any direct confrontation which could arise from setting-up a competing operation.

**Table 4.1 - Sample Composition  
and Percent Reporting Competition with Vendors**

<b>Business Type</b>	<b>% in Competition</b>
Auto Sales	100%
Grocery	33%
Nursery	100%
Pet Stores	100%
Retailers	67%
Restaurants	25%

**4.3.1 Percent Change in Sales**

The results indicate that 60% of the respondents think sales are impacted by vendors. Almost half, 47%, think the impact is negative, i.e., reduces their sales. Only one business, a fast-food establishment that does not directly compete with near by vendors, thought that sales were enhanced by vendors operating in the vicinity. The manager estimated, in this single case, that sales were increased by about 1%. The majority of respondents, however, view vendors as a source of competition and, consequently, as a factor diminishing sales. Estimates from this segment of the sampled businesses range from a 2% to 30% decrease in sales. The average decrease was 5.56%, which represents, across the businesses in the sample, an aggregate decrease in sales dollars of more than \$450,000 per year.

**4.3.2 Ranking of Complaints**

Respondents were presented a listing of potential complaints from which to attach rankings. The rankings were to represent a subjective ordering of the complaints from most significant to least significant. The results, presented in Figure 4.1, show that, without question, "lost sales" was ranked as the number one complaint by the majority of respondents. Almost 73% selected this category first, yielding an average ranking of 1.18. This is not an unexpected finding given the perception of an unfair competitive advantage attached to roadside vendors

and the nature of their operations. Further supporting this perception is the ranking of "tax avoidance" as second. More than 63% of the respondents to the questionnaire selected "tax avoidance" as their second highest complaint, resulting in an average ranking of 2.91.

Five categories of complaints fell closely together with average rankings between 3.5 and 4.25, suggesting that established businesses do generally concur that, while these complaints are not of primary concern, they are important considerations. The categories are, in rank order, "degradation of the area," "overhead advantages," "parking problems," "aesthetics," and, last in this list, "accident potential."

The final two categories of complaints, apparently not considered of great importance by this group of respondents, were "visual distraction," with an average ranking of 5.28, and "litter," last with an average 5.6 ranking. The fact that litter was not viewed as a major problem, relative to the other complaint categories, is consistent with the findings reported in previous TTI research, which suggested that vendors are cognizant of the neatness of their surroundings just as established businesses are and consequently do not allow litter to dissuade customers from stopping to shop.

#### 4.3.3 Business Changes Resulting from Competition with Roadside Vendors

The questionnaire requested input from established businesses about changes in several categories of business-related operational concerns, such as increases or decreases in prices, inventory, quality of goods, advertising expenditures, and employment levels. Several business changes were reported as a result of operating in close proximity to roadside vendors. Figure 4.2 shows the results obtained from this portion of the survey.

The most notable change reported by established merchants was a decrease in prices in response to competition from roadside vendors. As reasonable as this seems in response to competition, it should be noted that established merchants consider the added competition unfair and an inordinate burden upon their operations. The smaller the established business and the more direct the competition, the more vocal the cry of "foul play." Almost 3 out of 4 of the established businesses surveyed considered the "free" use of highway right-of-way unfair, and called for taxation and regulation to remedy the perceived problem.

Other changes include a trend toward decreased inventory levels. Almost one third (30.8%) of the established businesses surveyed reported that they decreased inventory levels in response to vendor activity, and two firms reported they decreased the quality of merchandise sold. Increases, however, were reported in both operating hours and in advertising expenditures, suggesting that established businesses are economically pressured by the loss of customers to roadside vendors and make a number of adjustments to counteract the effects.



## **5.0 HEALTH CONCERNS**

### **5.1 Introduction**

The Food and Drug Division of the Texas Department of Health has established a set of regulations governing the operation of mobile food vendors in Texas. These rules also include a specific set of regulations for a common sight along Texas highways, shrimp vendors. A mobile food vendor is defined as a person who travels from place to place transporting food and offering the same for consumption, with or without charge. The requirements established by the Texas Department of Health must be followed uniformly across the state. However, individual counties may impose any additional requirements they deem appropriate. The requirements of the five study counties (Harris, Dallas, Bexar, Travis, and Angelina) were surveyed in detail. Three of the five counties have additional requirements that exceed the state regulations. Dallas and Bexar counties do not have additional guidelines.

As a general rule, most produce vendors are exempt from permits and exempt from conforming to a set of operating guidelines. The main intent of the regulations is to govern mobile food units including shrimp vendors. The following section is designed to summarize those requirements set forth by Texas followed by an in depth look at each of the five counties that were studied.

### **5.2 Summary of State Requirements**

Generally, mobile food units must operate from a commissary. A commissary is a Health Department approved site at which food preparation, storage, and cleaning occurs. It is to be fully equipped according to the State of Texas Rules for Food Service and it is to be inspected by the Health Department. The state guidelines for mobile food units can be summarized as follows:

1. Mobile food units shall provide only single service articles for use by the consumer.
2. A mobile food units requiring a water system shall have a potable hot and cold water system under pressure of sufficient capacity to

6. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a manner that protects the water and equipment from contamination. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewage disposal system.

### 5.3 County Specific Requirements

In addition, to these requirements some counties expand the regulations in regard to construction, maintenance, and toilet facilities for mobile food units. The counties also classify mobile food units into different categories which have their own regulations. Some of these categories are general mobile food units, fresh produce units, snow cone units, ice cream units, catering units, shrimp and fresh seafood vendors, bar-b-que vendors, and repackaged food vendors. This section of the report will analyze each of the five counties with consideration to its specific requirements and the manner in which the county delineates between the different categories.

Harris County separates vendors into two categories: (1) shrimp vendors and (2) all other mobile food units. Both are required to use a commissary for food preparation, storage, and cleaning. Regulations governing the requirement for a service area and pressurized hot and cold potable water are also required for both categories of vendors in Harris County. All mobile food units and shrimp vendors must have at least two sinks. Permits for shrimp vendors cost \$200. Permits for all other mobile food units cost \$150. Additional construction requirements and nearby toilet facilities are mandated by Harris County regulations. Table 5.1 details these requirements.

**Table 5.2 - Summary of Health Requirements - Dallas and Bexar County**

<b>Unit Type</b>	<b>Shrimp</b>	<b>All Others</b>
Commissary	Yes	Yes
Service Are at Commissary	Yes	Yes
Pressurized Potable Hot & Cold Water	Yes	Yes
Number of Sinks	2	1
Permit Required	Yes	Yes
Permit Cost (\$)	200	150
Additional Construction Requirements	No	No
Nearby Toilet Facilities	Yes	No

Travis County categorizes its mobile food units into 5 classifications. These include food preparation, produce, snow cones, fresh seafood, repackaged foods, and catering. A commissary is required for all food preparation, fresh seafood, and repackaged food operations. Service area and potable hot and cold pressurized water regulations apply only to food preparation and fresh seafood vendors. Both of these vendors must incorporate three sinks for use in their operations while the other categories are not required to have sinks. Permits are necessary for all types of vendors except catering. The permit cost is \$35 for all vendors except fresh seafood vendors who must purchase a permit for \$85. Additional construction requirements are necessary for food preparation, fresh seafood, and catering units. Toilet facilities are required to be nearby food preparation and fresh seafood vendors.

limits of Lufkin and Diboll, in Angelina County. Table 5.4 illustrates the requirements for Angelina county. These regulations supplement the State of Texas health regulations for food service.

**Table 5.4 - Summary of Health Requirements - Angelina County**

<b>Unit Type</b>	<b>Mobile Food Unit</b>	<b>Produce</b>	<b>Snow Cone</b>	<b>Shrimp</b>
Commissary	Yes	No	No	No
Service Area at Commissary	Yes	N/A	N/A	N/A
Pressurized Potable Hot & Cold Water	Yes	No	Yes	Yes
Number of Sinks	1	0	1	2
Permit Required	Yes	No	Yes	Yes
Permit Cost (\$)	30 to 120	None	30 to 120	50
Additional Construction Requirements	Yes	No	Yes	No
Nearby Toilet Facilities	No	No	Yes	Yes

#### 5.4 Conclusion

It is apparent from this analysis that Tarrant and Travis County have the most extensive and thorough set of regulations for mobile food units followed by Angelina County. Bexar, Dallas, and Harris Counties are the most expensive counties in which to operate a vending operation. As stated earlier, some of the counties impose additional requirements that go beyond the regulations set forth by Texas. These regulations vary between the five counties that were researched. Vendors may contact the county or city health district in which they wish to operate for specific regulations governing mobile vendors.

## 6.0 STATE SALES TAX

### 6.1 Introduction

The purpose of this section is to examine the procedures involved in issuance of sales tax permits, inspection, verification of remittance, and auditing of roadside vendors. Also, the issue of sales tax avoidance will be addressed. Information contained in this section was obtained through interviews with officials from the Enforcement and Auditing Departments in the office of Comptroller of Public Accounts, in Austin. Interviews were also conducted with officials from the regional offices of Comptroller of Public Accounts in the five study counties.

### 6.2 Inspection and Verification of Remittance

Local offices of the Comptroller of Public Accounts make a majority of their inspections by a random canvassing of an area throughout the year. Policy dictates that an enforcement officer inspect a roadside business upon coming across one in the course of routine field work, and frequently, the enforcement office in Austin contacts local officials about vendors requiring investigation. Enforcement offices in Northwest Dallas and Northwest San Antonio use periodic cold stops on weekends to get the attention of vendors. Officials believe these cold stops will result in a higher compliance rate. Local enforcement offices view the issuance of sales tax permits to roadside vendors as an on-going effort achieving respectable results.

The vast majority of violators are reported by "snitch" calls. A "snitch" call is a tip received from the general public regarding a suspected illegal vendor. A majority of these complaints are placed by business competitors located near the suspected vendor. However, in rural areas, a great number of these calls are placed by local officials. In every comptroller office interview, the government official conveys the fact that every complaint will be investigated, even though the inspection may not occur for several months to a year after the call is received.

In the course of a normal inspection, the enforcement officer requires the vendor to produce a valid sales tax permit. If the vendor has not obtained a sales tax permit, the officer instructs the vendor on tax codes and obligations. An application is then provided immediately, at which time the vendor has the option of presenting the application to the officer or submitting

#### 6.4 Tax Avoidance

Tax avoidance by roadside vendors is clearly not a statewide problem. The consensus among comptrollers is that, by and large, a vast majority of vendors comply with the sales tax laws of Texas. The limited avoidance that occurs can be attributed to factors such as confusion about, or ignorance of the law. According to the Lufkin Enforcement Office, many vendors feel confused and overwhelmed about the sales tax process. Lufkin officials find vendors relieved after enforcement officers explain exactly what the tax obligations of the vendor entail. Avoidance will vary depending on the type of vendor and the items the vendor intends to sell. One enforcement office said the vast majority of vendors lacking permits were out-of-state vendors avoiding all taxes as they travel between states. Houston enforcement officials at the North Field Office, revealed that a large number of local vendors only conducted business on weekends. Therefore, the vendors assumed that their "part-time" status offered justification for avoidance of the law. Furthermore, some vendors believe the amount of revenue generated by their sales is so trivial that noncompliance with the law is unimportant.

Overall, a problem does not exist regarding sales tax avoidance by roadside vendors in Texas. Throughout interviews with state and local comptroller officials, the consensus opinion was that the question of sales tax avoidance by roadside vendors was a minor issue of little importance.

## **7.0 TRAFFIC AND SAFETY ISSUES ASSOCIATED WITH ROADSIDE BUSINESSES**

### **7.1 Safety and Visual Distraction**

Previous TTI research suggested that the location of itinerant merchant operations within highway rights-of-way may pose potential safety problems to the motoring public, customers, and even the vendors themselves. In a survey of Texas Department of Public Safety (DPS) Sergeants, four primary factors associated with roadside vendors were cited as increasing the level of danger on public roads. They are: (1) parking on the ROW, (2) entering and exiting the vending site, (3) reduced sight distance, and (4) visual distraction.

The most frequently noted factor mentioned by the DPS was that 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 the vendors themselves. On higher speed facilities, accidents resulting from vehicles leaving the roadway and striking parked vehicles, pedestrians, or structures can be quite severe.

Second, there is 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.

Third, structures and vehicles located near the roadway may interfere with motorist's 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.

Finally, to attract customers, itinerant merchants sometimes erect signs, banners, etc., or display their goods. Subsequently, when motorists 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,

## **8.0 VIDEO DOCUMENTARY**

### **8.1 Preparation and Content**

TTI, in cooperation with the TxDOT project technical coordinator, produced a video documentary of the findings of research on the roadside vending issue within Texas. The documentary was developed to illuminate the impact vendors have on TxDOT maintenance efforts, on the integrity of the highway system and on established businesses. The documentary was prepared for use by the TxDOT to communicate the factors, issues, and problems associated with unauthorized use of highway rights-of-way. Approximately 7 minutes in length, it was produced during the months of February and March, 1991 at roadside vending sites in Harris and Dallas counties and titled, "Roadside Vending: Impact on Texas Highway Rights-of-Way." One location was selected in Harris county (SH 249) and three locations in the Dallas area for filming and interviews with itinerant merchants. In addition, interviews were conducted with TxDOT maintenance personnel, both in the Houston and Dallas vicinities, the DPS in Houston, and established businessmen in both Houston and Dallas. Production and scripting of the final version was accomplished within a compressed time frame to accommodate the time table established for legislation on the roadside vending issue.

### **8.2 Video Presentation to Texas State Legislature**

In March, 1991 House Bill 1027 was introduced into the Texas State House of Representatives. The bill proposed statutory control of vendors on the rights-of-way of the state highway system by prohibiting certain activities and to provide for rule making authority for the commission to regulate vendor activity. Several statutes currently restrict activities on the highway right-of-way, and, as reported in previous TTI research, the General Appropriations Act prohibits use of public property for private use. No single law, however, provides criminal sanctions for this type of misuse of public property.

As a part of the legislative process, House Bill 1027 was presented for review and debate in a session of the County Affairs committee. State Representative Jim Tallas of Sugar Land, sponsor of the bill, used the video documentary on roadside vending developed as a part of this research to inform committee members about the scope and issues of the problem. The



## **9.0 SUMMARY AND CONCLUSIONS**

### **9.1 Summary**

The detailed analysis of selected vendor sites performed in the present study has yielded several insights that are of interest to highway maintenance and safety professionals:

- Accident potential varied widely between study sites. The selected sites were rated from low to extremely high, based on factors such as level of traffic congestion, traffic speed, sight distance, and ingress/egress requirements.
- There is a uniform pattern of right-of-way damage across the study sites. Almost all of the sites examined showed damage to the shoulder, pavement, and ground adjacent to the roadside vending operations.
- There is a wide degree of variation in the types and quality of items sold at roadside vending operations. The types of goods observed during this study ranged from pets and plants to auto parts, commercial items, and food.
- Many operators of established businesses consider themselves in competition with roadside vendors for some of the same customers and dollars and, in addition, consider the competition unfair, perceiving that itinerant merchants avoid rent, overhead expenses and taxes.
- The Texas Department of Health has developed guidelines for safe guarding the health of Texas citizens buying food from mobile food vendors. Separate regulations exist for shrimp vendors, and some counties have added to the state health regulations.
- Overall, sales tax avoidance is not a problem in Texas. The consensus among Controllers is that a large majority of itinerant merchants comply with the sales tax laws, and that the limited avoidance that does occur, is due to ignorance or confusion.
- Interviews with local law enforcement officials from the study counties suggest that roadside vending is seldom an operational concern of the agencies. Problems, when they do occur, are handled on a case by case basis and, while safety or accident potential is a concern, few accidents can be directly attributed to vending operations.

the integrity of the highway system, introducing random factors such as sight distance interference and speed variance, not considered in the design of our roadways. It is intuitively obvious that the highway system is not as safe with itinerant merchants in the right-of-way as it is without the vendors presence.

On the other hand, roadside vending is a historical and very natural economic expression of the opportunism and freedom of action that characterizes our free enterprise system. The clustering of vendors in urban locations may be a recent event, but roadside vending itself, is not a new phenomenon. More nearly new, is the approach to the design of our highways as integrated transportation "systems," which rely on the integrity of each component for overall system integrity. Safety and maintenance degradation as a function of vending activity in the right-of-way, clearly contributes to less than optimal operation of the highway system.

A solution needs to be found that balances the natural occurrence of economic activity on the roadside (where a competitive advantage can be found), with the requirement that the public be protected from unnecessary roadside hazards. It may be that a compromise, setting aside roadside selling "zones" or leasing the right-of-way to vendors, may offer the best hope of satisfying the most people.

APPENDIX A

**BUSINESS QUESTIONNAIRE**

**Texas Transportation Institute**

# \_\_\_\_\_

The Texas A&M University System  
College Station, Texas 77843

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Name of Person Filling-out Questionnaire: \_\_\_\_\_

Job Title: \_\_\_\_\_

**INSTRUCTIONS**

Roadside vending has become a common site along Texas highways. The Texas Transportation Institute, in cooperation with the Texas State Department of Highways and Public Transportation, is studying the safety and economic impacts of unauthorized use of highway rights-of-way for commercial business activities. An important part of this analysis concerns the impact unauthorized vending has on established businesses in the immediate vicinity of vending activity. We ask that you carefully consider the impact itenerate merchants have on your business and provide us with as much information as you can.

This questionnaire is designed to provide information about the impact roadside vending has on your business operations. It is **NOT** designed nor intended to compare you to your competitors. All responses will be confidential and reported only in aggregate.

The questionnaire consists of three sections:

SECTION I covers general background information about your business

SECTION II requests input from you on the impact of roadside vendors on your business operations

SECTION III is an assessment of the actions you have taken or requested regarding roadside vendors, and a request for your direct input

Thank you for your participation.

f) Business operations:

23. What hours are you open for business?

	<u>Time Open</u>	<u>Time Close</u>
Sun	_____	_____
Mon	_____	_____
Tue	_____	_____
Wed	_____	_____
Thu	_____	_____
Fri	_____	_____
Sat	_____	_____

24. Please estimate your annual sales \$ \_\_\_\_\_

25. How many customers do you have on a typical day?  
 \_\_\_\_\_ customers/day

II. Vendor Impact

a) How many vendors operate near your firm?

- 26. \_\_\_\_\_ one
- 27. \_\_\_\_\_ one to five
- 28. \_\_\_\_\_ five to ten
- 29. \_\_\_\_\_ more than ten

b) What days of the week do vendors operate? Please circle the appropriate day(s):

30. Mon Tue Wed Thu Fri Sat Sun

c) Indicate how often the vendors in your area operate:

- 31. \_\_\_\_\_ on an occasional basis
- 32. \_\_\_\_\_ on a regular basis
- 33. \_\_\_\_\_ on a constant basis
- 34. \_\_\_\_\_ on a seasonal basis

d) If the vendors in your immediate area are seasonal, please indicate which season by circling those that apply:

35. spring summer fall winter

e) Do you compete with the vendors for the same customers?

- 36. \_\_\_\_\_ Yes
- 37. \_\_\_\_\_ No

k) What business changes have you made as a result of vendor operations? Please circle increased or decreased for all that apply:

- 63. prices :increased / decreased
- 64. inventory :increased / decreased
- 65. operating hours :increased / decreased
- 66. advertising expenditures :increased / decreased
- 67. variety of items sold :increased / decreased
- 68. quality of items sold :increased / decreased
- 69. number of employees :increased / decreased

III. Action and Recommendations

a) Have you ever requested assistance from authorities regarding roadside vendors? If you have, please indicate those contacted below:

- 70. \_\_\_ Department of Public Safety
- 71. \_\_\_ county sheriff
- 72. \_\_\_ city police
- 73. \_\_\_ Highway Department
- 74. \_\_\_ other, please specify \_\_\_\_\_

b) What action, if any, was taken by the authority contacted?

- 75. \_\_\_ visited site/moved vendor
- 76. \_\_\_ issued citation
- 77. \_\_\_ referred you to another agency
- 78. \_\_\_ did nothing
- 79. \_\_\_ other, please specify \_\_\_\_\_

c) What comments or suggestions do you have regarding roadside vendors?

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Please use the stamped envelope to return completed questionnaire - all responses will remain completely confidential. Thank you for your help.