

Turquoise Trail Corridor Management Plan
Version 2.0

APPENDIX C Latest available New Mexico Administrative Code as of
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This rule was filed as: 18 NMAC 21.5

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 21 TRAFFIC CONTROL SIGNAGE
PART 5 OUTDOOR ADVERTISING REQUIREMENTS

18.21.5.1 ISSUING AGENCY: New Mexico State Highway and Transportation
Department P. O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5460
[10/31/98; 18.21.5.1 NMAC – Rn, 18 NMAC 21.5.1, Recompiled 11/16/01]

18.21.5.2 SCOPE: All state agencies and the general public.
[10/31/98; 18.21.5.2 NMAC – Rn, 18 NMAC 21.5.2, Recompiled 11/16/01]

18.21.5.3 STATUTORY AUTHORITY: NMSA 1978, Sections 67-12-1 et. seq., as
amended; and NMSA 1978, Sections 67-3-11 and 67-3-14, as amended.
[10/31/98; 18.21.5.3 NMAC – Rn, 18 NMAC 21.5.3, Recompiled 11/16/01]

18.21.5.4 DURATION: Permanent.
[10/31/98; 18.21.5.4 NMAC – Rn, 18 NMAC 21.5.4, Recompiled 11/16/01]

18.21.5.5 EFFECTIVE DATE: October 31, 1998, unless a later date is cited at the end of a
section or paragraph.
[10/31/98; 18.21.5.5 NMAC – Rn, 18 NMAC 21.5.5, Recompiled 11/16/01]

18.21.5.6 OBJECTIVE: Implement and enforce the New Mexico Highway Beautification
Act.
[10/31/98; 18.21.5.6 NMAC – Rn, 18 NMAC 21.5.6, Recompiled 11/16/01]

18.21.5.7 DEFINITIONS:

A. "Abandoned Sign" means any outdoor advertising device that (1) no
longer has active copy for a period of one year, and (2) no longer has a lease for the site
in which it is located.

B. "Beautification Act" means NMSA 1978 Section 67-12-1 et. seq., as

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amended.

C. "Bona Fide Business Activity" means a commercial or industrial activity which is carried on for profit and which operates for at least six (6) continuous months of the year and with a valid twelve (12) month business license issued by a city, county, or state whether or not a permanent structure is located thereon.

D. "Centerline of Highway" means a line equidistant from the edges of the median separating the main-traveled way of a divided highway separated by more than the normal median width or constructed on independent alignment.

E. "Commercial or Industrial Activities" means those activities generally recognized as commercial or industrial by zoning authorities in New Mexico, except that none of the following shall be considered commercial or industrial activities:

- (1) Outdoor advertising structures.
- (2) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
- (3) Transient or temporary activities.
- (4) Activities not visible from the main-traveled way.
- (5) Activities conducted in a building principally used as a residence.
- (6) Railroad track and minor sidings and supporting building and fixtures; except for depots open to the public at least six (6) hours-per day.
- (7) Activities located in their entirety more than 660 feet from the nearest edge of the right of way line outside urban areas.
- (8) Feeder pens and dairy activities, including sale of dairy products on the premises upon which they are produced.
- (9) Camping or overnight parking unless such facilities are equipped with adequate parking accommodations, modern sanitary facilities and drinking water. Establishment must be licensed or approved by appropriate governmental agency.

F. "Commission" means the State Highway Commission.

G. "Customary Maintenance" means the usual state of maintaining a sign in order to keep it in a good state of repair while not changing the general structure of non-conforming signs significantly. This would include painting, replacement of a damaged panel, or a rotten pole, etc.

H. "Department" means the New Mexico State Highway and Transportation Department.

I. "Directional Signs" means signs containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, education, and religious sites; and areas of natural scenic beauty or naturally suited for

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outdoor recreation, deemed to be in the interest of the traveling public.

J. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way establish or bring into being.

K. "Facing" means the number of surfaces on a sign.

L. "Information Center" means a site established and maintained within right-of-way for the purpose of informing the public of places of interest within the state and providing other information the Commission considers desirable.

M. "Interstate System" means that portion of the national system or interstate and defense highways located within this state as may now or hereafter be officially so designated by the Commission and approved pursuant to Title 23, United State Code.

N. "Lease" means any agreement, whether oral or written, by which one such party or his agent gives to another party for consideration, the right to erect or maintain an outdoor advertising device on the land or one of the parties or their principal.

O. "Legible" means capable of being read without visual aid by a person of normal visual acuity.

P. "Maintain" means to allow to exist.

Q. "Main-traveled" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

R. "Official Signs and Notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction of authorization contained in federal, state or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by law and erected by state or local government agencies or non-profit historical societies shall be considered official signs.

S. "On-premise sign" means sign, which advertises activities, conducted on the property upon which the sign is located; and is located within the area actually utilized for the purpose of the activity it advertises.

T. "Outdoor Advertising Device" means any surface and supporting structure, visible from the main-traveled way of the interstate or primary system, and used or intended to be used to advertise or inform. This may be a display, light, device, figure, painting, drawing, message, plaque, structure, or object may support multiple surfaces, and if so, each surface shall be considered a separate outdoor advertising facing. Any structure used or intended to be used to support such a surface as just

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described is included.

U. "Primary System" means that portion of connected main highways located within this state as may now or hereinafter be officially so designated by the Commission and approved pursuant to Title 23, United States Code.

V. "Public Service Signs" means signs located on school bus stop shelters, signs which;

- (1) identify the donor, sponsor, or contributor of said shelters;
- (2) contain public service messages which shall occupy at least 50 percent of the area of the sign;
- (3) contain no other message;
- (4) are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance and at places approved by the city, county, or state agency controlling the highway involved; and
- (5) may not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

W. "Public Utility Signs" means warning signs, informational signs, notices, or markers, which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations but is not advertising a product.

X. "Ranch/Farm, Service Club and Religious Notices" mean signs and notices which do not exceed thirty-two (32) square feet, which are erected and authorized by law, and which relate to the name of Ranch/Farm and directions to it, meetings of non-profit service clubs and charitable associations or religious services.

Y. "Safety Rest Area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right of way of the interstate or primary system.

Z. "Sign" means any outdoor advertising device as defined in paragraph 7.20

AA. "State Law" means a state constitutional provision or statute, or an ordinance, rule, or regulations enacted or adopted by a state agency or political subdivision of a state pursuant to the state constitution or to a state statute.

AB. "Unzoned Area" means an area, which has not been zoned by a properly constituted zoning authority according to legally prescribed procedure.

AC. "Unzoned Commercial or Industrial Area" means unzoned lands upon which there is located a bona fide commercial or industrial activity operating for at least six (6) continuous months of the year with a valid 12 months business license issued by a city, county or the state, whether or not a permanent structure is located thereon, and

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the area along the highway extending outward 1,000 feet from and beyond the edge of such commercial or industrial activity and extending perpendicular from the centerline to a depth of 660 feet from the nearest edge of the right-of-way line on the same side of the highway as the commercial or industrial activity.

AD. "Urban Area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each such state, or in urban place as designed by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Federal Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of Census.

AE. "Urbanized Area" means an area so designated by the Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Federal Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urbanized area within a state as designated by the Bureau of Census.

AF. "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity, except that within urban areas "visible" means within 660 feet of the nearest edge of the right-of-way line.

AG. "Zoned Industrial or Commercial Area" means area which is reserved for business, commerce, trade, manufacturing, or industry, pursuant to a validly promulgated state or local ordinance or regulation.

[10/31/98; 18.21.5.7 NMAC – Rn, 18 NMAC 21.5.7, Recompiled 11/16/01]

18.21.5.8 CLASSES OF SIGNS ALLOWED: No outdoor advertising devices shall be erected or maintained except:

- A. Directional and other official signs and notices.
- B. Signs, displays, and devices advertising the sale or lease of specific properties upon which they are located.
- C. On premise signs.
- D. Signs, displays, and devices located within 660 feet of the nearest edge of the right-of-way, which are zoned as industrial or commercial under authority of law.
- E. Signs, displays, and devices located within 660 feet of the nearest edge of the right-of-way in unzoned industrial or commercial areas.
- F. Signs lawfully in existence on October 22, 1965, determined by the Commission, subject to any necessary federal approval, to be landmark signs of historic

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or artistic significance worthy of preservation including signs on farm structures or natural surfaces, and which have been permitted under Section 27 [18.21.27 NMAC].

G. Signs lawfully in existence on the effective date of the Highway Beautification Act and which are continuing to exist and currently permitted under Section 27 [18.21.27 NMAC].

[10/31/98; 18.21.5.8 NMAC – Rn, 18 NMAC 21.5.8, Recompiled 11/16/01]

18.21.5.9 RECLASSIFICATION OF HIGHWAYS:

A. Any sign lawfully erected along a highway which is not part of the interstate or primary system at the time of the sign's erection and which sign becomes subject to the provisions of the Beautification Act and this rule due to the reclassification of the highway as a primary highway, will remain a legal and compensable sign so long as all permits for the sign are timely obtained and all permit fees timely paid. Failure to timely obtain permits and timely pay permit fees will, however, render such a sign illegal and non-compensable and subject to removal by the Department at the expense of the sign owner.

B. Permits and permit fees for the class of signs described in this section are timely obtained and timely paid if obtained and timely paid for the next calendar year following the reclassification, and following notification to the sign owner of the reclassification by the Department.

[10/31/98; 18.21.5.9 NMAC – Rn, 18 NMAC 21.5.9, Recompiled 11/16/01]

18.21.5.10 SIGNS PROHIBITED: No sign may be erected or maintained which:

A. Physically intrudes upon the right-of-way or by being of such a distracting nature so as to dangerously divert driver's attention from the roadway.

B. Attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

C. Prevents the driver of a vehicle from having a clear and unobstructed view of pre-existing official signs and approaching or merging traffic.

D. Contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

E. Is lighted in any way unless the lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the interstate or primary systems, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

F. Moves or has any animated or moving parts.

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G. Is erected or maintained upon trees or painted or drawn upon rocks or other natural features.

H. Is structurally unsafe or in disrepair as determined by the Department.

I. If it is determined by the Department that action is taken by a legal authority that does not amount to or come within a comprehensive zoning plan, a permit for the erection of a billboard will be denied and not authorized.

[10/31/98; 18.21.5.10 NMAC – Rn, 18 NMAC 21.5.10, Recompiled 11/16/01]

18.21.5.11 SIGN CONTENTS PROHIBITED: Signs containing the following copy are prohibited.

A. The imitation or simulation of official U.S. Interstate, state or county highway sign shields within advertising displays.

B. Prohibited words: Any words that could be construed as a command, such as "stop, slow, turn right (or left), straight ahead," or any such words whether used alone or in combination on signs which duplicate or resemble official signs so as to cause a motorist to be misled in any manner.

[10/31/98; 18.21.5.11 NMAC – Rn, 18 NMAC 21.5.11, Recompiled 11/16/01]

18.21.5.12 LANDMARK SIGNS: An outdoor advertising device will qualify as a landmark sign of historical or artistic significance upon presentation of satisfactory proof that the sign has been lawfully in place at the same location of a period of 25 years or more, and that the sign has not substantially changed in size, lighting or message content after designation as a landmark sign will terminate the landmark status.

[10/31/98; 18.21.5.12 NMAC – Rn, 18 NMAC 21.5.12, Recompiled 11/16/01]

18.21.5.13 MAXIMUM SIZE AND AREA LIMITATIONS:

A. The maximum area of the surface of any outdoor advertising device shall be 1,200 square feet, with a maximum length of 60 feet and a maximum height of 25 feet. Length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

B. An exception to the above is to be found in directional signs which are limited to a maximum area of 150 square feet and no more than 20 feet in any dimension. Public service signs are limited to thirty-two (32) square feet.

C. The areas shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the basic advertising face.

D. Where two (2) advertisements are involved on a single facing, the total square feet of each advertisement shall not exceed 350 square feet. Where two (2)

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structures are involved at the same location, each structure must be separately permitted.

E. Where four (4) advertisements are involved on a back to back structure or a double facing, the total square feet of each advertisement shall not exceed 350 square feet. Each face must be separately permitted.

F. The maximum area of any single advertisement on a single facing shall not exceed 1,200 square feet. Each facing of a double-faced or back to back sign must meet this same standard.

[10/31/98; 18.21.5.13 NMAC – Rn, 18 NMAC 21.5.13, Recompiled 11/16/01]

18.21.5.14 BACK-TO-BACK AND V-TYPE SIGNS: Sign and sign facing placement will be permitted as described in the Outdoor Advertising Handbook. [10/31/98; 18.21.5.14 NMAC – Rn, 18 NMAC 21.5.14, Recompiled 11/16/01]

18.21.5.15 MINIMUM SPACING REQUIREMENTS: For all signs other than Directional Signs:

A. Interstate Highways and Controlled Access Freeways: No two signs on the same side of the right-of-way shall be spaced less than 500 feet apart inside and outside villages and cities.

B. Non-Freeway Primary Highways: Outside of incorporated villages and cities, no two signs on the same side of the right-of-way shall be spaced less than 300 feet apart.

C. Inside incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than 100 feet apart on non-freeway primary highways.

D. Directional and official signs such as historic markers or illegal signs within the right-of-way shall not be counted nor shall measurements be made from them for purposes of determining compliance with the 500, 300 or 100-foot spacing requirements.

[10/31/98; 18.21.5.15 NMAC – Rn, 18 NMAC 21.5.15, Recompiled 11/16/01]

18.21.5.16 INTERSECTIONS, INTERCHANGES, AND SAFETY REST AREAS: Outside of incorporated villages and cities, no sign structure shall be placed within 500 feet of an interchange, or an intersection at grade, or a safety roadside rest area or any portion of an interstate or primary highway which is a limited access highway. Said 500 feet to be measured along the interstate or limited access primary highway from the beginning or ending of the pavement widening at the exit from the entrance to the main-

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traveled way. The spacing-between-structures provisions do not apply to sign structures separated by buildings or other obstructions in such a manner that only one sign structure located within the above spacing distance is visible from the highway at one time.

[10/31/98; 18.21.5.16 NMAC – Rn, 18 NMAC 21.5.16, Recompiled 11/16/01]

18.21.5.17 **MEASUREMENTS OF UNZONED COMMERCIAL OR INDUSTRIAL AREAS:** An unzoned commercial or industrial area shall be measured from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and not from the property line of the activity, unless the property line and outer edge of the building, parking lots, storage or processing areas of the activities should coincide. Such measurements shall be along or parallel to the edge of the right-of-way of the highway.

[10/31/98; 18.21.5.17 NMAC – Rn, 18 NMAC 21.5.17, Recompiled 11/16/01]

18.21.5.18 **SIMULATED COMMERCIAL ACTIVITY:** Buildings or activities constructed or initiated to simulate legitimate commercial or industrial activity but not constituting commercial or industrial activity, shall not be used as a basis for determining unzoned commercial areas.

[10/31/98; 18.21.5.18 NMAC – Rn, 18 NMAC 21.5.18, Recompiled 11/16/01]

18.21.5.19 **TEMPORARY UNZONED COMMERCIAL - INDUSTRIAL AREAS:** Buildings or open sales areas actively used for commercial or industrial purposes for six (6) or more consecutive months will qualify an area as unzoned commercial or industrial zone, provided a 12-month business license for that activity is obtained from the local governing authority.

[10/31/98; 18.21.5.19 NMAC – Rn, 18 NMAC 21.5.19, Recompiled 11/16/01]

18.21.5.20 **DIRECTIONAL SIGNS REQUIREMENTS:**

A. **Directional Signs Prohibited:** The following signs are prohibited:

(1) Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersection traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

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- (4) Obsolete signs.
- (5) Signs which are structurally unsafe or in disrepair.
- (6) Signs which move or have any animated or moving parts.
- (7) Signs located in rest areas, parklands, or scenic areas.

B. Size Requirement of Directional Signs: No sign shall exceed the following limits:

- (1) maximum area - 150 square feet;
- (2) maximum height - 20 feet;
- (3) Maximum length - 20 feet.

C. All dimensions include border and trim, but exclude supports.

D. Lighting of Directional Signs: Signs may be illuminated, subject to the following:

(1) Signs, which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed by any portion of the traveled way of an interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

E. No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

F. Spacing of Directional Signs:

(1) Each location of a directional sign must be approved by the Department.

(2) No directional sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

(3) No directional sign may be located within 2,000 feet of the rest area, parkland, or scenic area.

(4) No two directional signs facing the same direction of travel shall be spaced less than one (1) mile apart.

(5) Not more than three directional signs pertaining to the same activity and facing the same direction of travel, may be erected along a single route approaching the activity.

(6) Signs located adjacent to the interstate system shall be within 75 air miles of the activity.

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(7) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

G. Permitted Content of Directional Signs: The message of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photograph representations of the activity or its environs are prohibited.

[10/31/98; 18.21.5.20 NMAC – Rn, 18 NMAC 21.5.20, Recompiled 11/16/01]

18.21.5.21 LIGHTING RESTRICTIONS: Signs shall not be placed with illumination that interferes with the effectiveness of any official traffic sign or device. Signs shall not include or be illuminated by flashing, intermittent or moving lights (except that part necessary to given public service information such as time, date, temperature, weather or similar information). No sign shall cause beams or rays of light of such intensity or brilliance to be mistaken for a warning or danger signal as to cause glare or impair the vision of any driver's operation of a motor vehicle.

[10/31/98; 18.21.5.21 NMAC – Rn, 18 NMAC 21.5.21, Recompiled 11/16/01]

18.21.5.22 APPLICANTS FOR SIGN PERMITS: No outdoor advertising device or facing allowed under Section 8.6 or 8.7 [Subsections F. and G., Section 8 of 18.21.5 NMAC] may be erected or maintained unless the owner of the outdoor advertising device or facing first submits an application for a permit and obtains a permit for the device or facing from the State Maintenance Bureau of the Department. Exceptions to this requirements are:

A. Signs on a piece of property giving notice that said specific land and/or improvements alone are offered for sale. Generalized real estate signs are not excepted.

B. On-premise signs advertising goods or services from sale on the premises.

[10/31/98; 18.21.5.22 NMAC – Rn, 18 NMAC 21.5.22, Recompiled 11/16/01]

18.21.5.23 APPLICATION FEES:

A. Each application shall be accompanied by a nonrefundable \$100 fee. If the lessor or lessee changes, the new names and addresses of parties to the lease shall be provided to the Department.

B. Directional sign applications need not be accompanied by a fee.

[10/31/98; 18.21.5.23 NMAC – Rn, 18 NMAC 21.5.23, Recompiled 11/16/01]

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18.21.5.24 SIGN PERMIT TAGS:

A. Upon the approval of an application for a permit, a sign permit tag will be issued for the specific sign at a given location. Within thirty (30) days of issuance (one hundred and twenty (120) days should the sign structure not be constructed at the date of such issuance), the sign permit tag shall be affixed to the lower corner of the face of the sign nearest the right-of-way line or to the face of the upright, leg, or pole of the structure nearest the right-of-way line.

B. Permit tags are transferable with the ownership of signs, but may not be relocated from one site to another. Permit tags are issued to specific signs at specific locations and shall not be transferred from one location to another. Any change in size or location of the advertising device will require a new application and a new permit tags.

[10/31/98; 18.21.5.24 NMAC – Rn, 18 NMAC 21.5.24, Recompiled 11/16/01]

18.21.5.25 RENEWAL OF SIGN PERMIT TAGS: Sign permits are issued on a calendar year basis, January 1, through December 31. Every permit must be renewed each year and accompanied by a \$25 renewal fee. Permanent metal tags will be issued with fees collected annually in advance.

[10/31/98; 18.21.5.25 NMAC – Rn, 18 NMAC 21.5.25, Recompiled 11/16/01]

18.21.5.26 TIME LIMITS: Sign permits will be valid from the date of their issuance until the following January 1, and permit tags will be valid from the date of their issuance until otherwise notified by the Department, except that when a sign which is the subject of the issuance of a permit and tag is not erected at the date of such issuance, such sign must be erected within one hundred and twenty (120) days after such issuance, with the tag properly affixed, or the permit and tag will be void. Upon written request to the Department, a one time sixty (60) day extension to erect a previously permitted sign, may be granted.

[10/31/98; 18.21.5.26 NMAC – Rn, 18 NMAC 21.5.26, Recompiled 11/16/01]

18.21.5.27 PERMIT TAG REPLACEMENT: Lost permit tags may be voided and replaced within a month of issuance upon the submission of the new application. Damaged or stolen permit tags may be voided and replaced upon application or within thirty (30) days of notification by the Department that the tag is not on the sign. There will be a \$25 charge for each replacement.

[10/31/98; 18.21.5.27 NMAC – Rn, 18 NMAC 21.5.27, Recompiled 11/16/01]

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18.21.5.28 LOCAL ZONING AUTHORITIES: Local political subdivisions shall have authority under their own zoning laws to zone areas for commercial or industrial purposes, and the bona fide action of such local political subdivision in this regard will be accepted for the purposes of these regulations. The Department will not issue permits for the erection of the new signs in areas where counties and municipal zoning ordinances are in effect and which require a permit to be issued for such signs by the county or municipal authority, unless the applicant has received a permit for the sign from the governmental authority promulgating such ordinances, and a copy of the approved permit application or a letter granting approval is attached to the Department's sign permit application; provided, however, in areas zoned commercial or industrial by a county law, provisions of NMAC 10.9 [10.9 NMAC] shall apply.
[10/31/98; 18.21.5.28 NMAC – Rn, 18 NMAC 21.5.28, Recompiled 11/16/01]

18.21.5.29 NEW HIGHWAY CONSTRUCTION: A permit will not be issued for a sign to be located along a new interstate or primary route, until the route is accepted by the Department and is open to traffic.
[10/31/98; 18.21.5.29 NMAC – Rn, 18 NMAC 21.5.29, Recompiled 11/16/01]

18.21.5.30 SIGN OWNER NAME PLATES: All signs must have affixed the sign owner's name and address on a separate name panel of wood or metal construction fastened to the sign. A commercial sign company shall limit its name plate to its trade name only, provided that the trade name is as indicated on all the company's outdoor advertising permit applications.
[10/31/98; 18.21.5.30 NMAC – Rn, 18 NMAC 21.5.30, Recompiled 11/16/01]

18.21.5.31 REMOVAL OF NON-COMPENSABLE SIGNS: Permit Violations: Any outdoor advertising device, which has been erected or maintained in violation of the permit requirements of the Beautification Act or this rule, which has been erected or maintained without timely payment of all permit fees required by the Beautification Act or this rule, is subject to removal by the Department without compensation and at the expense of the owner of the outdoor advertising device. Such removal will be preceded by notice to the owner of the outdoor advertising device, if known, that the device must be removed within 30 days of will be subject to removal by the Department at the owner's expense. If the outdoor advertising device is not removed within 30 days, the Department may thereafter remove the device at the expense of the owner of the device without any compensation whatsoever.

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[10/31/98; 18.21.5.31 NMAC – Rn, 18 NMAC 21.5.31, Recompiled 11/16/01]

18.21.5.32 LOCATION VIOLATIONS AND ENCROACHMENTS: Any outdoor advertising device which has been erected and maintained under permit but is at variance from the location set forth in the permit application is subject to removal by the Department without any compensation whatsoever and at the expense of the owner of the outdoor advertising device.

A. Any outdoor advertising device which has been erected, in such a manner that all or part of the device encroaches into or upon the right of way of any interstate system or primary system, as defined by the Beautification Act, is subject to removal by the Department without any compensation whatsoever and at the expense of the owner of the outdoor advertising device.

B. Such removals will be preceded by notice by certified mail to the owner of the outdoor advertising device and to the owner of the land upon which the device is located that the device must be removed within thirty (30) days or will be subject to removal by the Department at the owner's expense. If the outdoor advertising device is not removed within the thirty (30) days, the Department may thereafter remove the device at the expense of the owner of the device and without any compensation whatsoever.

[10/31/98; 18.21.5.32 NMAC – Rn, 18 NMAC 21.5.32, Recompiled 11/16/01]

18.21.5.33 VIOLATION OF STANDARDS AND SPECIFICATIONS: Any outdoor advertising device which has been erected and maintained in accordance with all permit and permit fee requirements of the Beautification Act and this Rule, but which does not conform to the standards and specifications of the Beautification Act and this rule pertaining to size, lighting, content location, maintenance, spacing and construction is subject to removal by the Department without any compensation whatsoever and at the expense of the owner of the outdoor advertising device. Such removal will be preceded by notice via Certified Mail to the owner of the device, and to the owner of the land if known, upon which the device is located of the particular standards and specification that the device violates, and that the violations must be corrected within thirty (30) days or the device will be subject to removal by the Department at the owner's expense. If the failure to conform to the standards and specifications is corrected within the said thirty (30) days, then said failure will be deemed cured for all purposes; if, the defects are not corrected within the thirty (30) days, the Department may thereafter remove the outdoor advertising device at the expense of the owner of the device without any compensation whatsoever.

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[10/31/98; 18.21.5.33 NMAC – Rn, 18 NMAC 21.5.33, Recompiled 11/16/01]

18.21.5.34 **LANDOWNER INTERFERENCE WITH SIGN REMOVAL:**
Landowners who interfere with the removal of signs from their property, preventing either the sign owner or the Department from removing same, maybe liable for the costs of a forced removal.

[10/31/98; 18.21.5.34 NMAC – Rn, 18 NMAC 21.5.34, Recompiled 11/16/01]

18.21.5.35 **CUSTOMARY MAINTENANCE OF CONFORMING SIGNS:**
Customary maintenance shall be performed on all permitted signs.

A. No process will frequently involve a change of legend and delays in reselling the advertising surface. For the purpose of these regulations, six (6) months will be the time limit allotted sign owner to restore and replace live legends at which time the Department may give a thirty (30) day notice to the owner to revitalize the sign or remove it as abandoned. Should no action be taken in thirty (30) days, the Department may remove the sign at the owner's expense.

B. No sign, which has been blank for a period of one (1) year, shall be issued a renewal permit for the next calendar year, a new application for a permit must be submitted.

[10/31/98; 18.21.5.35 NMAC – Rn, 18 NMAC 21.5.35, Recompiled 11/16/01]

18.21.5.36 **CUSTOMARY MAINTENANCE OF NON-CONFORMING SIGNS:** A non-conforming sign increased in size by 30% or more from the original inventory is illegal and subject to removal.

A. Should any design or structural change be made to a non-conforming sign so as to result in an increase in said sign's value, such increase in value shall be deemed non-compensable should said sign be acquired by the Department through the condemnation process.

B. A non-conforming sign when destroyed by natural causes may not be reconstructed and its permit shall be revoked. Reconstruction shall render the sign a new structure and illegal and its permit shall be revoked.

C. Non-conforming signs erected before May 19, 1966, which have been destroyed through vandalism, may be re-erected in kind or may be offered to the State for purchase according to the procedures set forth in the Beautification Manual.

[10/31/98; 18.21.5.36 NMAC – Rn, 18 NMAC 21.5.36, Recompiled 11/16/01]

18.21.5.37 **MAINTENANCE PROHIBITED FROM HIGHWAY RIGHT-OF-**

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WAY:

A. No sign owner shall maintain or erect any advertising device from or in the right-of-way of any interstate or primary highway.

B. Any sign owner violating this provision of these regulations shall have his sign permit revoked whether or not the sign is conforming and such action shall render the sign illegal and subject to immediate removal.

[10/31/98; 18.21.5.37 NMAC – Rn, 18 NMAC 21.5.37, Recompiled 11/16/01]

18.21.5.38 RIGHT-OF-WAY LANDSCAPE DAMAGE: It is unlawful for any sign owner or his agents to damage the landscape of any public right-of-way. These damages are more specifically described as follows:

A. Cutting trees on the right-of-way for the purpose of facilitating the readability of an outdoor advertising device.

B. Damage to any landscaping, such as grass, shrubs, rocks, gravel, or cement.

C. Damage to any improvements in the right-of-way such as fences, ditches, structures, etc. The sign owner shall be liable for and shall reimburse the State for the cost of replacing any and all features of the right-of-way to its original condition and shall have his sign permit revoked for any signs involved in such acts.

[10/31/98; 18.21.5.38 NMAC – Rn, 18 NMAC 21.5.38, Recompiled 11/16/01]

18.21.5.39 MOBILE TYPE SIGNS: No advertising devices shall be displayed that are attached or placed on mobile vehicles or trailers.

[10/31/98; 18.21.5.39 NMAC – Rn, 18 NMAC 21.5.39, Recompiled 11/16/01]

18.21.5.40 MUNICIPAL LAND OWNERSHIP: City property located in an area governed by these regulations not zoned, whether within or outside city, town or village limits, must conform to these regulations in every respect concerning the unzoned commercial or industrial area. This applies to signs and advertising devices intended to advertise the local community or local community services.

[10/31/98; 18.21.5.40 NMAC – Rn, 18 NMAC 21.5.40, Recompiled 11/16/01]

18.21.5.41 FARMING-AGRICULTURAL AND RELATED ACTIVITIES: The use of feeder pens, farming and dairy facilities including pastures, milk parlors, and on-premise sale of dairy products or farm products shall not constitute an unzoned commercial or industrial zone.

A. Roping arenas, rodeo grounds, or fair grounds will not be considered

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unless activities open to the public are conducted continuously six (6) consecutive months or more during each calendar year.

B. Any sign adjacent to both an Interstate System and Primary System, which is located within the control area of both systems must meet the spacing requirements of the Interstate Highway System.

[10/31/98; 18.21.5.41 NMAC – Rn, 18 NMAC 21.5.41, Recompiled 11/16/01]

18.21.5.42 ON-PREMISE SIGNS: On-premise signs are defined and limited to signs advertising on-premise activities only and are further defined as follows:

A. Signs used to advertise the activities conducted on the property where the sign is located. (See the definition of On-Premise Signs [18.21.5.7 NMAC]).

B. There must be a regularly used building, and/or service, and/or repair, and/or processing, and/or storage, and/or parking area used in conjunction with the on-premise activity.

C. Land, whether contiguous or not, and whether owned or not, that is not used as part of the major activity as set forth herein, but is surplus if it is held for future use, shall not qualify as a part of the immediate on premise area, including railroad mainline tracks, siding, spurs, and loading docks.

D. The lands that are directly used as an integral part of the principal activity of the subject advertised, even though the sign site and principal activity is separated by highway shall be deemed to be contiguous.

E. Definition of on-premise parking lots, storage areas, servicing areas, are those areas regularly used in conjunction with on-premise activity and have continued maintenance of the surfacing and lighting.

F. When the activity, which is advertised by an on-premise sign ceases for six (6) consecutive months, then the on-premise sign advertising that activity become illegal and a public nuisance and subject to removal under these regulation.

[10/31/98; 18.21.5.42 NMAC – Rn, 18 NMAC 21.5.42, Recompiled 11/16/01]

18.21.5.43 MISCELLANEOUS PROVISIONS AND RESTRICTIONS:

A. Stopping or parking on the right-of-way of any controlled access highway, or violation of the access control line to service any advertising device, is unlawful and constitutes grounds for revocation of the permit as to such advertising device. In the event of such revocation the advertising device which is the subject of the revoked permit is illegal and subject to removal without compensation to the owner.

B. Proposed outdoor advertising devices which will be located in areas covered by the Highway Beautification Act and these Rules, and which require a permit

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issued by the Department, shall not be erected prior to the issuance of such permits. If any advertising device is erected in violation of this requirement said advertising device is illegal and subject to removal without compensation to the owner.

[10/31/98; 18.21.5.43 NMAC – Rn, 18 NMAC 21.5.43, Recompiled 11/16/01]

18.21.5.44 PENALTIES FOR REPEATED VIOLATIONS: If repeated violations establish a pattern or practice of disregard for these rules and regulations, permitting privileges are subject to suspension. A notification of such intent to suspend permitting privileges will be sent to the sign owner, stating the grounds therefor.

A. Any person upon receipt of a notice of intent to suspend shall have a right to a hearing on whether the suspension should be invoked. A hearing shall be requested within fourteen (14) days from the receipt of the notice.

B. Any person requesting a hearing shall be notified of the time, place and procedures for the hearing.

[10/31/98; 18.21.5.44 NMAC – Rn, 18 NMAC 21.5.44, Recompiled 11/16/01]

HISTORY OF 18.21.5 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records and Archives under: LD 1, Outdoor Advertising filed August 25, 1970; SHC Rule 77-1, Outdoor Advertising Rules and Regulations, supersedes Rule LD 1, filed March 15, 1977; SHC Rule 78-1, Outdoor Advertising Rules and Regulations; supersedes SHC 77-1, filed September 21, 1978; SHTD Rule90-3(L), Outdoor Advertising Rules and Regulations; supersedes SHC 78-1, filed February 19, 1991.

History of Repealed Material: [RESERVED]