

This rule was filed as 18 NMAC 20.5.

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 20 TRAFFIC SAFETY
PART 5 REMOVAL OF ENCROACHMENTS, OBSTRUCTIONS, ABANDONED MOTOR
VEHICLES AND FOR RESTRICTION OF VENDING

18.20.5.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department, Post Office Box 1149, Santa Fe, New Mexico 87504-1149 (505) 827-5526.
[12/31/98; Recompiled 11/16/01]

18.20.5.2 SCOPE: All state agencies and general public.
[12/31/98; Recompiled 11/16/01]

18.20.5.3 STATUTORY AUTHORITY: This rule is adopted pursuant to NMSA 1978 Sections 66-1-1, 67-3-1, 67-7-1, 67-8-1, 67-12-1, 67-13-1.
[12/31/98; Recompiled 11/16/01]

18.20.5.4 DURATION: Permanent.
[12/31/98; Recompiled 11/16/01]

18.20.5.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section or paragraph.
[12/31/98; Recompiled 11/16/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

18.20.5.6 OBJECTIVE:

A. The main purpose of a highway system is to provide a safe and efficient means of movement for people and goods. In order to provide for such safe and efficient operation, it is necessary that certain regulations be established to control the use of the highway right-of-way consistent with the needs and rights of both the traveling public and property owners adjacent to the highway right-of-way.

B. The highway right-of-way is to be preserved for highway purposes except that certain temporary or permanent occupancies. Use of highway right-of-way for non-highway purposes may be permitted on the basis that such use and occupancy is in the public interest and does not result in impairment of the highway or operational interference with the health, safety and public welfare of road users. All other occupancies and uses of state highways for non-highway purposes are prohibited.

C. The Department recognizes that any rule which is adopted may create some unforeseen burdens, hardships or problems and for that reason reserves the right to vary the provisions of the following rule, in harmony, however, with the general purposes and intent of the rule where, in the exercise of sound and reasonable judgment, literal application of such rule would defeat the objectives hereinafter set forth.

[12/31/98; Recompiled 11/16/01]

18.20.5.7 DEFINITIONS:

A. **“Department”** means New Mexico State Highway and Transportation Department.

B. **“Encroachment”** means an intrusion into, under, upon, or over highway right of way by a permanent structure or fixture. This term shall include, but not be limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, mailboxes, Christmas displays and banners.

C. **“Hazardous Obstruction”** means any structure or object (other than a motor vehicle, whether or not an encroachment, situated into, under upon and over highway right-of-way which jeopardized public safety by either creating an unsafe condition or significantly hindering the efficient movement of traffic.

D. **“Highway Right-of-way”** means all roads, patrol yards, and rest areas owned, controlled, or maintained by the Department. The term “road” means the entire width of the right of way and shall include but not be limited to: travel lanes, roadside, shoulder, median, ditches, culverts, ramps turnouts and construction and maintenance easements.

E. **“Non-Hazard Motor Vehicle”** means an unattended motor vehicle within highway right-of-way not falling within the definition of Wrecked Vehicle or Traffic Hazard Motor Vehicle, and parked in violation of the Motor Vehicle Code.

F. **“Non-Hazardous Obstructions”** means an object unlawfully remaining within the boundaries of highway right-of-way which is neither an encroachment, a motor vehicle, a hazardous object, a temporary sign, a political poster or refuse.

G. **“Overhanging Sign”** means any sign intruding upon highway right-of-way which is affixed to a building or structure lying outside highway right-of-way.

H. **“Refuse”** means any article, object or substance which is commonly discarded as waste, or which, if discarded on the ground, may create or contribute to an unsanitary, offensive or unsightly condition. Refuse includes, but is not limited to, the following items or classes of items; waste food; waste paper and paper products; cans; bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

I. **“Rural Area”** means areas outside urban boundaries of all cities, towns, or municipalities of over 5000 population. These boundary lines may or may not coincide with corporate limits but are established by and are on file with the Planning Division of the Department.

J. **“Sign”** means any readily moveable object (except a motor vehicle), or permanent structure which is placed upon the highway right-of-way and which has as its purpose or effect the conveyance of information to travelers on the highway or property used in conjunction with such purpose.

K. **“Traffic Hazard Motor Vehicle”** means a motor vehicle left unattended either wholly or partly within a travel lane of the highway right-of-way, or a motor vehicle left unattended within thirty-five (35) feet of the nearest travel lane on all interstate highways (urban and rural) and on all rural primary and rural secondary highways (outside city limits).

L. **“Travel Lane”** means that portion of the highway right-of-way, which is intended, for the free passage of motor vehicles.

M. **“Vending”** means the selling, dealing, trafficking, hawking or peddling of goods or services, including, but not limited to, the operation of concession booths and roadside stands.

N. **“Wrecked Vehicle”** means any vehicle located within the highway right-of-way which shows visible signs of damage from collision, vandalism or other causes, and appears incapable of self-propulsion.
[12/31/98; Recompiled 11/16/01]

18.20.5.8 PERMITTED ENCROACHMENTS: All encroachment under this Section are subject to review by the Department:

A. **Overhanging Signs.** In urban established business districts where the front of the building is the highway right-of-way line.

(1) Sign overhang must be a minimum of one foot behind the back of the curb.

(2) Sign must have a minimum vertical clearance of twelve (12) feet from the top of the curb.

(3) Sign must be wholly supported from the building or wholly supported by a suitable structure positioned entirely outside of the highway right-of-way.

(4) The minimum vertical clearance of twelve (12) feet will be adhered to unless there is a city ordinance in which the encroachment exists which would require more vertical clearance in which case the city ordinance will prevail.

B. In commercial areas where the Department utilizes existing city right-of-way and there is no additional right-of-way acquired.

(1) Sign must be wholly supported from outside the highway right-of-way being utilized by the Department.

(2) No portion of the sign and its supporting structure may be lower than twelve (12) feet from the top of the curb or theoretical curb line elevation.

(3) No portion of the sign may intrude into the highway right-of-way closer than one (1) foot behind the back of the curb or the theoretical curb line.

(4) The minimum vertical clearance of twelve (12) feet will be adhered to unless there is a city ordinance in which city the encroachment exists which would require more vertical clearance in which case the city ordinance will prevail.

C. **Buildings.** A building may be allowed to encroach upon highway right-of-way provided the following conditions coexist:

- (1) The building was in existence prior to the commencement or construction of the highway;
- (2) The encroachment will not interfere with the safe and free flow of traffic as determined by the Secretary or his designee; and
- (3) The owner enters into an agreement with the Department whereby the building exterior will not be remodeled or rebuilt on the right-of-way without express permission of the Secretary and, if necessary, the Federal Highway Administration.
- (4) Where additional highway right-of-way is being acquired, no building will be allowed to encroach on the highway right-of-way.

D. Awnings and Marquees.

- (1) Awnings in urban business districts or closely spaced buildings may be allowed to encroach provided the entire awning is supported from the building and will not lower less than eight (8) feet from the sidewalk, nor closer than six (6) feet from the back of the curb. Permanently constructed covers or canopies over the sidewalk shall conform with the same requirements as awnings. The only advertising to be allowed on awnings or canopies will be the name of the business.
- (2) The marquees in urban business districts may be allowed to encroach provided they are supported wholly from outside the highway right-of-way, area minimum height of twelve (12) feet from the top of the curb, and encroach no closer than four (4) feet from the back of the curb.

E. Irrigation Ditches.

- (1) On primary and secondary highways where it is impractical to construct irrigation ditches outside the highway right-of-way and wherever deemed necessary by the Secretary of the Department, or his designee, those ditches which are necessary may be constructed by the Department inside the right-of-way. Maintenance of such ditches shall remain the responsibility of those parties deriving benefits therefrom.
- (2) There shall be no irrigation ditches constructed, which are parallel to the highway inside the access control line. Where it is impractical to construct irrigation ditches outside the highway right-of-way and wherever deemed necessary by the Secretary of the Department, or his designee, those ditches that are necessary may be constructed by the Department inside the highway right-of-way but outside the access control line. This applies only to situations where the highway right-of-way line and access control line is not the same line. Where they are the same line, no ditches shall be permitted inside the highway right-of-way.
- (3) A permit must be obtained from the Department and, if necessary, the approval of the Federal Highway Administration, before locating irrigation ditches on highway right-of-way.

F. Utilities. Utilities on highway right-of-way which are outside construction zones or primary and secondary systems will not be considered as encroachments. The crossing of interstate highways by utilities will be made in such a manner that routine maintenance of the utility can be performed from outside the controlled access line. A permit must be obtained from the Department and, if necessary, the approval of the Federal Highway Administration, before the installation of utilities on highway right-of-way.

G. Special Encroachments.

- (1) Special encroachments such as Christmas decorations or banners advertising special events, erected by governmental authorities, may be allowed to encroach for a limited time on primary or secondary right-of-way provided they do not interfere in any way with traffic control devices or traffic signs. Banners so low or Christmas lights of such a color that would make the traffic control devices not immediately and easily noticeable will not be allowed.
- (2) Signs informing the public that a particular area, within the median or adjacent to the roadway, is planted, landscaped, or maintained by an organization or individual, may be placed within that particular area, on all state highway systems except the interstate. These signs must be located a minimum of two (2) feet from the back of the curb or the edge of the shoulder, must be a maximum of thirty-three (33) inches high from the top of the curb or existing grade, must have a sign surface no larger than eighteen (18) inches by twenty-four (24) inches, and must conform to any other standards approved by the State Highway Commission. The orientation of the signs must be parallel to the centerline of the roadway. The only information permitted on the signs is the name of the organization or individuals responsible for the planting, landscaping, or maintenance of the area in which they are located, together with a statement that that area is so planted, landscaped, or maintained. Each such sign erected must be approved by the Secretary of the Department or his designee.

[12/31/98; Recompiled 11/16/01]

18.20.5.9 PROHIBITED ENCROACHMENTS:

A. There shall be no encroachment allowed which may interfere with traffic control devices or traffic signs. This includes not only protruding signs but neon lights of such a color that they would make the traffic control device not immediately and easily noticeable.

B. No encroachments shall be permitted to remain on highway right-of-way, which poses a danger to the health, safety, or welfare of the motoring public, or which interfere with the operations of the Department.

C. No encroachments shall be permitted to remain on highway right-of-way, which are not in substantial compliance with the requirements of Section 8 [now 18.20.5.8 NMAC].

D. Vending: See Section 10 [now 18.20.5.10 NMAC below].
[12/31/98; Recompiled 11/16/01]

18.20.5.10 VENDING:

A. No vending from or on highway right-of-way shall be permitted.

B. There shall be no vending-type business so close to the highway right-of-way that automobiles or persons would be serviced while on the highway right-of-way.

C. Concession booths or roadside stands, whether or not in operation, shall not be permitted to remain on highway right-of-way. These structures shall be treated as encroachments, hazardous obstructions or non-hazardous obstructions, as the circumstances warrant.

D. Excepted from these prohibitions are any vending-type businesses established with prior Department approval on highway right-of-way by an federal, state or public agency, organization or entity for the purpose of providing a service to the public.

E. A representative of the Department shall advise the owner, operator or other person in charge of the vending operation that the vending is not permitted in the highway right-of-way and must cease immediately. If the vending does not cease immediately, the Department representative may file a complaint of criminal trespass (NMSA 1978, Section 30-14-1) with the law enforcement authority having jurisdiction.

F. If the vending consists of the advertisement for sale of a motor vehicle, a representative of the Department will contact the nearest law enforcement officer and request enforcement of (NMSA 1978 as amended) Sections 66-3-126 and 66-3-127 as provided therein.

[12/31/98; Recompiled 11/16/01]

18.20.5.11 PROCEDURE FOR REMOVAL OF PROHIBITED ENCROACHMENTS AND NON-HAZARDOUS OBSTRUCTIONS:

A. An unlawful encroachment or non-hazardous obstruction shall be identified by the Department with reasonable particularity, and ownership shall be determined, if possible.

B. A written notice shall be sent by certified/return receipt mail to the apparent owner at his last known address. If ownership cannot be ascertained, or no address for the owner can be found after diligent search, a copy of such notice shall instead be posted in a conspicuous place on the encroachment or non-hazardous obstruction. This notice shall contain the following information:

(1) A description of the encroachment or non-hazardous obstruction sufficient to identify it;

(2) Notification that the encroachment or non-hazardous obstruction is in violation of 18 NMAC 20.5 [now 18.20.5 NMAC];

(3) That the encroachment or non-hazardous obstruction must be removed within ten (10) days by the owner at his expense;

(4) That if the encroachment or non-hazardous obstruction remains after ten (10) days, the Department will remove it and bill the owner for the actual costs incurred in its removal;

(5) That the owner has a right to a hearing before the District Engineer or his designee(s) on whether or not the encroachment or non-hazardous obstruction must be removed;

(6) That the owner himself has the responsibility to request this hearing by mailing a written Request for Hearing to the District Engineer within ten (10) days of service of the first written notification or he will be deemed to have waived his right to a hearing.

C. If the owner has failed to remove the encroachment or non-hazardous obstruction and has failed to request a hearing before the District Engineer within ten (10) days of service of the notice, the Department may remove the encroachment or non-hazardous obstruction at the owners expense.

[12/31/98; Recompiled 11/16/01]

18.20.5.12 OBSTRUCTION AND ENCROACHMENTS REVIEW BOARD:

A. There shall be an Obstruction and Encroachment Review Board established in each Highway District in New Mexico. Said Board shall be composed of three (3) persons: the District Engineer or his designee; the District Traffic Engineer or his designee; the District Construction Engineer or his designee; when issues regarding construction or operations of roadway segments.

B. There shall be an Obstruction and Encroachment Review Board established in each Highway District in New Mexico. Said Board shall be composed of three (3) persons: the District Engineer or his designee; the Right of Way Division Director or his designee; the Project Development Engineer; when issues regarding encroachments during the design/project development stages occur.

C. Upon receipt of a timely Request for Hearing from an owner who has received a notice to remove his encroachment or non-hazardous obstruction, the District Engineer or his designee shall assign a hearing date no later than thirty (30) days for the date of the request and send notification, in writing, to the owner, the members of the Board and the Department's General Counsel of the time, place an date of the hearing, the nature of the matter to be heard, and the authority of the Board.

D. The proceedings before the Board shall be in conformance with the Administrative Procedures Act, Section 12-8-1, et seq., N.M.S.A. 1978. The findings of the Board shall be by a preponderance of the evidence.

E. The determination to be made by the Board shall be as follows: Encroachments: A determination as to whether or not an encroachment upon highway right-of-way in fact exists;

(1) If an encroachment exists, whether or not it falls within one of the permitted encroachments identified in Section 8 of this rule [now 18.20.5.8 NMAC];

(2) If the encroachment is not a permitted type, whether or not it poses a danger to the health, safety or welfare of the motoring public, interferes with the operations of the Department, or is otherwise not in conformance with 18 NMAC 20.5 [now 18.20.5 NMAC];

(3) If the encroachment is to be permitted to remain, whether it shall be dealt with by means of an encroachment agreement or by means of a sale to the owner of the parcel upon which the encroachment rests; and

(4) If the encroachment must be removed, a reasonable time for the accomplishment of this removal by the owner before the Department may proceed to remove the offending encroachment at the owners expense.

F. Non-Hazardous Obstructions: A determination as to whether or not the object constitutes a non-hazardous obstruction;

(1) If it does, whether or not the owner has shown sufficient mitigating circumstances to permit the object to remain; and

(2) If the object is required to be removed, a reasonable time for the accomplishment of this removal by the owner before the Department may proceed to remove the offending non-hazardous obstruction at the owners expense.

[12/31/98; Recompiled 11/16/01]

18.20.5.13 HAZARDOUS OBSTRUCTIONS:

A. A hazardous obstruction may summarily be removed from the highway right-of-way without notice to the owner, if any, thereof.

B. The determination of whether or not an obstruction is hazardous shall be made by the District Engineer or his designee in the District in which the obstruction is situated, who shall employ sound highway engineering practices in making this determination.

[12/31/98; Recompiled 11/16/01]

18.20.5.14 REFUSE: Refuse may be summarily removed from the highway right-of-way.

[12/31/98; Recompiled 11/16/01]

18.20.5.15 SIGNS AND POLITICAL POSTERS: Signs and political posters are not allowed on highway right-of-way and may be summarily removed from the highway right-of-way without notice to the owner, if any, thereof.

[12/31/98; Recompiled 11/16/01]

18.20.5.16 MOTOR VEHICLES:

A. **Traffic Hazard Motor Vehicles.** Such vehicles may be summarily removed from the highway right-of-way by the New Mexico State Police upon verbal notification by the District Engineer or his designee(s), followed thereafter by written notification as soon as possible.

B. **Non-Hazard Motor Vehicles.**

(1) Without Plates: Such vehicles may be summarily removed from the highway right-of-way by the New Mexico State Police, as provided by law, upon written notification by the District Engineer or his designee(s).

(2) With Plates: Such motor vehicles may be removed by the New Mexico State Police after the following procedure have been utilized. The Department will cause to be posted upon any such vehicle a written notice containing the following information:

(a) A description of the non-hazard motor vehicle sufficient to identify it;

(b) Notification that the non-hazard motor vehicle is parked in violation of 18 NMAC 20.5 [now 18.20.5 NMAC];

(c) Advising the owner within four (4) days of the notice that the non-hazard vehicle must either be removed at his expense; and

(d) Any vehicle, which remains in the right-of-way after the dates provided in this subsection will be summarily, removed by the New Mexico State Police, as provided by law, upon written notification by the District Engineer or his designee(s).

(e) Wrecked Vehicles. Such vehicles may be summarily removed from the highway right-of-way by the New Mexico State Police, as provided by law, upon written notification by the District Engineer. [12/31/98; Recompiled 11/16/01]

18.20.5.17 If any county, city or other local governmental authority has concurrent jurisdiction over any matter covered in this rule and such authority has adopted more restrictive requirements, conditions, or procedures, those requirements, conditions or procedures shall apply. Nothing in this rule shall be construed to limit the right of local governmental authorities to regulate these matters as authorized by law. [12/31/98; Recompiled 11/16/01]

HISTORY OF 18.20.5 NMAC:

Pre-NMAC Regulatory Filing History: The material in this Part was derived from that previously filed with the State Records and Archives under:

Rule No. 1, Right of Way Encroachment Standards, filed August 20, 1968.

SHC Rule 84-3, New Mexico State Highway Department Rule for Removal of Encroachments, Obstructions, Abandoned Motor Vehicles and for Regulation of Vending, filed December 6, 1984.

SHTD Rule 88-5(L), New Mexico State Highway and Transportation Department Rule for Removal of Encroachments, Obstructions, Abandoned Motor Vehicles and for Regulation of Vending, filed April 4, 1988.

History of Repealed Material: [RESERVED]