



LINCOLN COUNTY-NM
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BY LOREE1

ORDINANCE NO. 2006-6

Lincoln County Outdoor Advertising Regulation Ordinance

AN ORDINANCE ESTABLISHING RESTRICTIONS AND PROHIBITIONS TO PROMOTE SAFETY OF TRAVELERS ALONG CERTAIN HIGHWAYS, TO PREVENT VISUAL POLLUTION OF THOSE HIGHWAYS THROUGH REGULATION OF OUTDOOR ADVERTISING, TO PROTECT THE INVESTMENT IN PUBLIC HIGHWAYS AND PRIVATE PROPERTY VALUES; DEFINING AREAS TO BE REGULATED; MAKING RESTRICTIONS ON SIGNS AND BILLBOARDS; REQUIRING A PERMIT PRIOR TO CONSTRUCTION OR ALTERATION; PROVIDING FOR EXCEPTIONS; PROHIBITING ABANDONED AND DANGEROUS SIGNS; PROVIDING FOR REMOVAL OF NON-COMPLIANT BILLBOARDS, AND ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING FOR ORDINANCES IN CONFLICT HEREWITH AND FOR THE SEVERABILITY OF PARTS HEREOF; PROVIDING AN EFFECTIVE DATE; AND REPEALING ORDINANCE 2004-10.

WHEREAS, pursuant to the New Mexico *Highway Beautification Act*, § 67-12-1, *et seq.*, the Board of County Commissioners is empowered to enact regulations regarding outdoor advertising along the highways within its jurisdiction; and

WHEREAS, the County of Lincoln has a long and rich history, which is significant to the cultural heritage of the state of New Mexico. Such history, in part, is the natural beauty of the land; and

WHEREAS, the United States Supreme Court has ruled that the concept of public welfare includes aesthetic as well as monetary values; and

WHEREAS, billboards placed at certain locations may obstruct the vision of drivers and therefore constitute a traffic menace, diminishing the safety of those traveling on public highways; and

WHEREAS, in order to promote public safety, health, welfare, convenience and enjoyment of public travel, protect the public's investment in public highways and private property rights, and preserve and enhance the scenic beauty of lands bordering the public highways within the County of Lincoln, the Board of County Commissioners finds that regulation of outdoor advertising is a valid public purpose; and

WHEREAS, for the reasons stated herein, the regulation of outdoor advertising along highways is a reasonable and proper exercise of the police power of the County of Lincoln.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF LINCOLN, NEW MEXICO:

Section 1. Short Title.

This Ordinance may be cited as the "Lincoln County Outdoor Advertising Regulation Ordinance."

Section 2. Purpose.

The purpose of this Ordinance is to promote public safety, health, welfare, convenience and enjoyment of public travel, protect the public investment in public highways and private property values, and preserve and enhance the scenic beauty and prevent visual pollution of lands bordering the public highways within the County of Lincoln through regulation of outdoor advertising.

Section 3. Definitions.

For the purpose of this Ordinance, the following terms and words are hereby defined:

Billboard shall mean any freestanding sign more than sixteen (16) square feet in face area, including the sign trim, which advertises or directs attention to a business, product, service or event.

Mural shall mean a non-commercial picture or illustration applied directly to a wall of a building or structure which does not advertise or promote business, service or product.

Outdoor advertising shall mean any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other object that is designed, intended or used to advertise or inform, any part of which is located within six hundred sixty feet of the nearest edge of the right-of-way and is visible from the main-traveled way of the interstate or primary systems or those located beyond six hundred sixty (660) feet of the right-of-way, located outside of urban areas, visible from the main-traveled way of the system and erected with the purpose of their message being read from such main-traveled way.

Sign shall mean any outdoor display or other representation which shall be so constructed, placed, attached, painted, erected, fastened or manufactured in any other manner whatsoever, so that the same shall be used for advertising.

Section 4. Areas of Regulation.

This Ordinance shall govern the lands located along highways within the County of Lincoln, New Mexico, and specifically within six hundred sixty (660) feet of the nearest edge of the right-of-way of the following:

- U.S. Highway 380 from the Socorro County line southeast to the Town of Carrizozo, from the Town of Carrizozo southeast to the Village of Capitan limits, and from the Village of Capitan limits to the Chaves County line;

- the entire length of N.M. Highway 37, from its inception at Highway 380 south to the Townsite of Nogal limits, and from the southern limits of Nogal to its intersection with N.M. Highway 48;

- U.S. Highway 54 from Corona south to the Town of Carrizozo limits, from the Town of Carrizozo limits south to the Otero County line;

- the entire length of N.M. Highway 48 from its northerly inception at the southern limits of the Village of Capitan south to the Village of Ruidoso limits;

- from the southerly limits of the Village of Ruidoso on Highway 70 east to the Mescalero Indian Reservation;

- Highway 70 from the limits of the City of Ruidoso Downs east to the Chaves County line;

- N.M. Highway 220 from its easterly inception at Highway 48 east to Fort Stanton where it merges with Highway 380; and

These "Areas of Regulation" are not bound by Lincoln County zoning regulations and therefore are deemed to be "unzoned industrial or commercial areas" pursuant to New Mexico Administrative Code § 18.21.5, AB.

Section 5. Restrictions and Prohibitions.

A. There shall be no billboard more than 300 square feet in size within the County of Lincoln. Any lawfully erected sign or billboard that existed prior to the enactment of this Ordinance shall be classified as a non-conforming structure.

1. A nonconforming sign/billboard shall be allowed to remain; however it may not be enlarged, expanded, modified, extended, or relocated.

2. A nonconforming sign/billboard that has been destroyed by natural causes may be reconstructed within the following thirty (30) days to the same dimensions which existed prior to its destruction.

3. Whenever a nonconforming sign/billboard has been discontinued as an outdoor advertising device for a period of sixty (60) consecutive days, the County of Lincoln may cause the billboard to be removed at the expense of the property owner.

4. Customary maintenance shall be performed on all outdoor advertising devices in order that they be kept in a good state of repair.

5. **Spacing requirement.** No billboard shall be nearer than one thousand (1,000) feet radius to any other billboard, with the exception that a separate, adjacent property owner may erect a billboard within a 1,000 foot radius of an existing or permitted billboard, and other than the exceptions provided for in subparagraphs C, E, and F of Section 6, hereof. This provision shall not prevent the erection of double-faced, back-to-back, or V-type advertising displays, providing the maximum separation of signs is five feet or less.

6. **Variances.** A variance may be requested when it can be shown that in the case of a particular billboard, strict compliance with the provisions of this Ordinance would cause undue hardship. The Commission may authorize a variance provided that the general intent of this Ordinance is preserved, that the public interest is protected, and that such variance does not have the affect of nullifying the intent and purpose of the Ordinance. Under no circumstance shall a variance be granted that significantly conflicts with or nullifies the objectives, spirit, and intent of the Ordinance.

a. **Requirement for Public Notification To Surrounding Property Owners.** Any such application for variance shall be made to the Commission and shall require publication of public notice prior to the public hearing on the matter. The County Commission shall make the final determination whether to grant or deny the application for variance.

(1) All requests for variances shall be submitted in writing to the Commission at least ten (10) days prior to the County Commission public hearing. Notice shall be mailed by the County to each owner of property situated wholly or partly within one thousand (1,000) feet of the property to which the proposed variance relates. At least twenty (20) days in advance of any hearing that requires publication of public notice to surrounding property owners, the County Commission shall publish notice of the hearing on the application in a newspaper of local circulation. The notice of public hearing shall:

- (a) Give the date, time and place of the hearing;
- (b) Contain a statement describing the location of the property and the subject matter(s) of the hearing; and
- (c) Specify how additional information can be obtained.

b. The owner of the property which is the subject of a public hearing that requires public notice to surrounding property owners, or his authorized agent, shall appear at the public hearing scheduled on the matter.

c. The County Commission shall act on an application for variance at the first regular meeting following the appropriate legal notification set forth

above. The County Commission shall state for the record the key findings of fact on which the County Commission's decision is based.

d. When any application for variance is approved, approved with conditions, or denied, written notification of the County Commission's action listing any conditions imposed shall be sent within seven (7) days of the County Commission's action to the applicant and to any other party who has requested to be so informed. The County Commission's decisions shall be the final administrative appeal. The exclusive remedy for parties dissatisfied with the action of the County Commission shall be filing of a petition for review with the District Court within thirty (30) days of the date the decision of the County Commission was rendered.

7. All permissible outdoor advertising signs and billboards shall comply with the regulations of the *Night Sky Protection Act*, § 74-12-1, *et seq.*, NMSA 1978, and shall not have intermittent, moving or flashing lights, or video images.

B. **Size of Signs/Billboards.** All references to maximum allowable size shall refer to one side of a sign/billboard. The total area of any one sign face shall not exceed three hundred (300) square feet, including the sign trim, and be no higher than ten (10) feet high by thirty (30) feet in length. The total aggregate of all faces of signs or combination of signs allowed shall not exceed six hundred (600) square feet of sign area.

1. Signs made of individual cut out letters or shapes shall include the sum area of the combination of letters or shapes. Stacking of signs vertically or horizontally is prohibited, regardless of total face area permitted.

2. Signs and billboards shall have a ground clearance of no more than five (5) feet and be no more than 15 feet off the ground at the highest point of the sign/billboard.

C. Portable/trailer signs are prohibited, due to the risk these signs pose related to visual pollution, traffic, and hazards to persons and property during high winds, excepting those signs utilized by the State of New Mexico Highway and Transportation Department during construction or repair of roadways.

D. **Permit Required.** Any person who wishes to construct or alter a billboard within the areas regulated by this Ordinance is required to make application to the County of Lincoln and obtain approval for same prior to construction or alteration. The applicant shall attach to the application form an approved permit from the State of New Mexico. The application and plans shall be reviewed by the County Manager, or his designee, within thirty (30) days from receipt thereof, and either approved, approved with conditions, or denied for not meeting the requirements of this Ordinance.

Section 6. Exceptions.

The following are exempt from regulation under this Ordinance:

- A. Any sign or billboard lawfully erected within the Areas of Regulation shall remain a legal and compensable sign so long as all permits for the sign or billboard are timely obtained and all permit fees, if any, are timely paid.
- B. Any sign or billboard for which a New Mexico State permit has been approved and which is under construction at the time this Ordinance becomes effective.
- C. "Official signs and notices," "public service signs," and "public utility signs" as those terms are defined in NMAC §18.21.5 and which are erected and maintained by public officers or public agencies.
- D. Signs having less than sixteen (16) square feet in face.
- E. Murals of a non-commercial nature.
- F. "Temporary signs" for the purpose of announcing events open to the public for a limited time period not to exceed sixty (60) days. Temporary signs shall be a maximum of thirty-two (32) square feet per sign. Temporary signs shall be removed within ten (10) days after the event.
- G. Any outdoor advertising device 25 years of age or more that qualifies as a landmark sign, as that term is defined in NMAC §18.21.5.12.

Section 7. Abandoned or dangerous signs.

An "*abandoned sign*" is any sign which no longer directs, promotes, or advertises a business, lessee, owner, product or activity conducted, or product or service available, on the premises where such sign(s) is displayed. A "*dangerous sign*" is any sign that is materially, structurally, or electrically defective whether by construction, maintenance, neglect, abuse or age. If it is determined by the County Manager or his designee that any sign is determined to be "abandoned" or "dangerous" or in any way endangers the public, the County may issue an order to the owner of the property upon which the sign is located. Said order shall state the nature of the violation and require repair or removal of the sign within thirty (30) days of the date of order. If a "*dangerous sign*" provides the potential for immediate peril to persons or property, the County Manager or his designee may cause such sign to be removed and assess the costs of removal to the owner of the land upon which said sign is located, if the owner of such sign cannot be reached and/or does not comply.

Upon vacating the premises or discontinuing the business, the property owner or lessee shall cause all signs to be removed, blanked out, or covered. The owner or lessee will have thirty days from the date of closure of said business within which to comply.

Section 8. Penalties for Violation.

Any outdoor advertising device that does not comply with the provisions of this Ordinance is subject to removal. Such removal will be preceded by notice *via* certified mail to the owner of the device, and to the owner, if known, of the land upon which the device is located, of the particular standard and/or specification that the device violates, and that the violation(s) must be corrected within thirty (30) days or the device will be subject to removal by the County at the owner's expense. Any person who violates any of the provisions of this Ordinance shall be punished by a fine of up to three hundred dollars (\$300) and/or imprisonment of not more than ninety (90) days, or both. Each day a violation continues shall constitute a separate offense.

Section 9. Conflict Clause.

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. Severability Clause.

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 11. Effective Date.

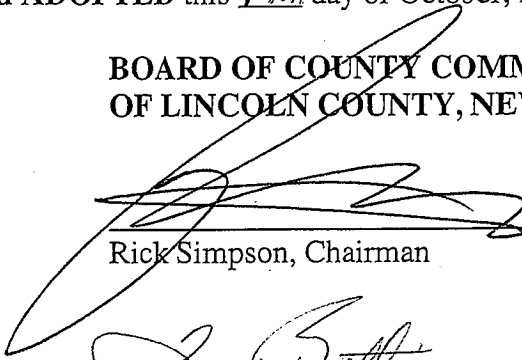
This Ordinance shall take effect thirty (30) days after recording in the Public Records of Lincoln County.


Section 12. Repeal.

Lincoln County Ordinance 2004-10 is repealed upon the effective date of this Ordinance.

PASSED, APPROVED, and ADOPTED this 17th day of October, 2006.

**BOARD OF COUNTY COMMISSIONERS
OF LINCOLN COUNTY, NEW MEXICO**


Rick Simpson, Chairman


Tom Battin, Vice Chairman

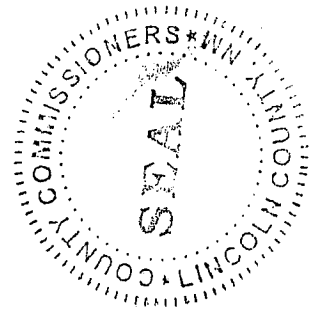
Earl B. Hobbs, Member

Eileen Lovelace
Eileen Lovelace, Member

Mauriece St. John
Mauriece St. John, Member

Attest:

Tammie J. Maddox
Tammie J. Maddox
Lincoln County Clerk



CountyAtty/WM/Ordinances/Billboards2006

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