

Repeal and New Rule, R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Section was "Off-premise advertising signs erected within the protected area of Non-Limited Access State and Federal Aid Primary highways in zoned and unzoned commercial or industrial areas".

#### 16:41C-8.9 (Reserved)

Repealed by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Section was "Off-premise advertising signs along all other highways".

#### 16:41C-8.10 (Reserved)

Repealed by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Section was "General standards".

### SUBCHAPTER 9. NONCONFORMING SIGNS

#### 16:41C-9.1 General provisions

(a) A nonconforming sign may continue at its permitted location and may be maintained, repaired, and/or restored provided that:

1. The sign shall be lawfully erected in accordance with its permit and is currently maintained in that manner;
2. The sign has not been removed, abandoned or totally destroyed; and
3. The advertising surface area is not larger than it was on the effective date of the adoption, revision, or amendment of the ordinance, statute, or regulation that rendered the sign nonconforming.

(b) Cutouts and/or extensions may not be added to a nonconforming sign. However, the advertising surface of a nonconforming sign may be reduced (and later rebuilt) to allow for cutouts and/or extensions to be added within its permitted rectangular envelope.

(c) Customary maintenance of a nonconforming sign shall be permitted in order to maintain the sign's structural integrity and/or aesthetics.

(d) A nonconforming sign may be modernized provided the number of sign faces and the advertising surface area are not increased, and the modernization is completed within 90 days. Approval of the Department shall be obtained prior to modernization of any nonconforming sign.

Amended by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Substantially amended section.

#### Case Notes

Permit for billboard sign exceeding legal size limitation denied if no nonconforming sign currently existing nor continuously maintained with valid permit issued before statute's effective date. *Wes Outdoor Advertising v. Department of Transportation*, 97 N.J.A.R.2d (TRP) 3.

Rebuilding after nonconforming billboard knocked down by vehicle was not violative of zoning regulations. *Commuter Signs v. Department of Transportation*, 95 N.J.A.R.2d (TRP) 1.

### SUBCHAPTER 10. VIOLATIONS AND PENALTIES

#### 16:41C-10.1 Notice, protests and hearings

(a) When the Administrator determines that any person has committed a violation of any regulation set forth in this chapter, a written notice of violation and revocation, including a copy of the violation report, shall be issued to such person. Within 30 days after receipt of notice, such persons shall:

1. Correct the violation, if same is subject to being brought into compliance. If a multiple message sign is the subject of the violation, freeze the sign in one position within three business days of receipt of written notice;
2. Remove the signs or signs alleged to be in non-compliance; or
3. File a written protest with the Administrator stating the reason for protest and requesting either an informal hearing before the Office of Outdoor Advertising or a formal hearing before the Office of Administrative Law, or both.

(b) Protests shall be filed within 30 days of the receipt of notice of the alleged violation or proposed revocation.

1. Filing of a protest shall not abate any penalties due, nor stay the right of the Administrator to remove any signs, space, and advertisements within 30 days of giving notice, unless the protestor furnishes security of the kind and in an amount satisfactory to the Administrator or the Commissioner or a court of competent jurisdiction stays such penalties or removal.

2. All protests shall be signed by the protestor or by a duly authorized agent.

(c) All informal hearings shall be scheduled within 30 days of receipt of the request by the Department unless extended by agreement.

(d) Within 15 days of the conclusion of an informal hearing, the Administrator shall issue a written decision, confirming modifying or vacating the determination of the Office of Outdoor Advertising. Within 30 days of receipt of the Administrator's written decision, a protestor may request a formal hearing before the Office of Administrative Law, which shall be conducted in accordance with the

Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Administrator's decision shall be a final decision if a request for a formal hearing is not made in the manner set forth above.

Amended by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Substantially amended section.

#### 16:41C-10.2 Causes for revocation of license or permit

(a) A license may be revoked whenever any statement made in the application for a license is materially false.

(b) A permit may be revoked for any of the following reasons:

1. Whenever a statement in the application is materially false;
2. Whenever a sign has been erected contrary to the approved application and conditions of the permit;
3. Whenever any sign has been cited for and found in violation of a major violation more than twice within any 12 month period. For purposes of this provision, a major violation would be a violation of the size or lighting provisions of this chapter.
4. Whenever any provision of the law or rules contained in this chapter is violated;
5. Whenever the advertising surface area used is in excess of the permitted area;
6. Whenever a permitted structure has not been kept in a safe and well-maintained condition;
7. Whenever a permit is being maintained upon public property without the express permission of the governing authority;
8. Whenever a permit is being maintained upon private property without the consent of the property owner;
9. Whenever the existing natural landscape of the right-of-way has been trimmed, altered or destroyed in any way by the permittee or agent thereof without complying with N.J.A.C. 16:41;
10. Whenever a permittee fails to place his name and the sign's application number on the sign as required by this chapter;
11. Whenever a sign remains abandoned for a period of four months after being so cited by the Department; or
12. Whenever a permittee has failed to pay a penalty pursuant to N.J.A.C. 16:41C-10.5(e).

Recodified from 16:41C-10.3 and amended by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Substantially amended section. Section was "Nature of hearings".

#### Case Notes

Billboard erected at a location other than one licensed was in violation of zoning regulations. Department of Transportation v. Wes Outdoor, 95 N.J.A.R.2d (TRP) 5.

#### 16:41C-10.3 Removal provisions

(a) In addition to the imposition of penalties as provided for in this chapter, any sign which is cited for an offense of these rules which has not been corrected within 30 days from the receipt of a notice of the alleged offense may be removed within 30 days of the receipt of a notice of removal. A notice of removal may be issued concurrently with any other notice.

(b) The filing of a written protest of any notice in accordance with this subchapter shall stay a notice of removal until such time as a final agency decision has been issued. In the event that the Department determines that immediate removal of the sign is required to avoid substantial damage to other property or to ensure public safety, no administrative stay of a notice of removal shall occur.

(c) If there has been a final adjudication which affirms the issuance of a notice of removal and the sign is not removed within 30 days of that adjudication, the Commissioner may authorize entry upon the property to effect the removal of the sign. Said entry and removal of the sign shall be without liability to the Commissioner and his or her agents. The cost of removal may be recovered against the owner either in a separate legal action or in addition to any penalties owed as determined by the Commissioner or court of competent jurisdiction.

Repeal and New Rule, recodified from 16:41C-10.4 by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Former section recodified to N.J.A.C. 16:41C-10.2.

#### 16:41C-10.4 Penalties

(a) In addition to all penalties set forth in this chapter, any person who erects, uses or maintains any sign or authorizes the use of his name in connection therewith, in violation of any of the provisions of the State Act and this chapter, is liable to a per diem penalty of not less than \$50.00, nor more than \$500.00 for each day the sign remains in violation. However, except for cases where the violation is egregious, the maximum penalties assessed shall not exceed the gross income of the sign.

(b) A penalty of not less than \$50.00 shall be assessed for all violations. Liability for penalties in excess of \$50.00, and per diem accumulation thereof provided for in (a) above, shall begin 30 days from the date of receipt of the notice of violation by the person so noticed, unless the accumulation of penalties has been stayed by the Administrator, or the violation has been corrected prior to the accumulation of any penalties.

(c) In the interest of equity, the Commissioner shall have the power to abate all or any portion of penalties.

(d) In determining the amount of any penalty assessed, or to be assessed, for violating any rule contained in this chapter, the Commissioner shall consider, among other facts, the gross income of the sign, the egregiousness of the violation, whether the violation was intentional or accidental, whether the violator has a history of repeated violations, and the egregiousness thereof, and such other facts as will

assist in arriving at a penalty commensurate with the violation.

(e) Penalties shall be paid in full within 60 days of the final and unappealable order by a court or an administrative tribunal, if contested, or within 60 days of written notification of the assessment of the penalty, if uncontested.

Recodified from 16:41C-10.5 and amended by R.1997 d.77, effective February 18, 1997 (operative March 3, 1997).

See: 28 N.J.R. 4742(a), 29 N.J.R. 614(a).

Substantially amended section. Section was "Removal provisions".