

# NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



## BANNER POLICY

Effective Date

April 18, 2019

# BANNER POLICY

## 1. Purpose and Authority

- a. To prescribe policy and procedures for permitting Banners within State Highway Right-of-Way.
- b. State and federal law prohibits commercial advertising on public right-of-way. Therefore, the Banners allowed pursuant to this policy may not include commercial advertising of any kind. Any message on a Banner shall not include the name, symbol, slogan or any identifying feature of a person, a business, a commercial product, or a private activity. Refer to Section 3. e. Banners may be allowed for only the following purposes:
  - (1) to announce plans for an upcoming Event,
  - (2) to promote community pride and spirit, or
  - (3) to serve as a non-message decoration.
- c. Neb. Rev. Stat. 39-1359 provides the Department authority to control the use or occupancy of State Highway right-of-way. Section 39-1359 states as follows: "The rights-of-way acquired by the department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of the department."

## 2. Definitions

- a. A Banner is any device, display, decoration, flag, pennant, symbol, badge or object affixed to or hung from a pole lawfully located on the right of way of a State highway. For purposes of this policy, the State will only allow the following two types of Banners:
  - (1) Pole Mounted Banner is a Banner attached to a single existing pole.
  - (2) Over-the-Highway Banner is a Banner which extends over the traveled lanes of the highway and shall not be attached to light poles with breakaway devices.
- b. An Event is a federal, state or local celebration, occasion, occurrence, happening, gathering, remembrance, or other similar event, that is observed by or open to the general public, is of limited duration and frequency and has been formally sanctioned or sponsored by the governing body of the village or city. Any federal or state observed holiday is an event.
- c. Freeway shall mean a divided arterial highway for through traffic with full control of access which has grade separations and interchanges and no at grade intersections.
- d. Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection.
- e. Ramp Terminal shall mean that portion of a ramp adjacent to the through traveled way, including speed change lanes and tapers.

## 3. Criteria for Placement

- a. Applicant, Owner, Location and Installation:
  - (1) The City or Village must be the applicant, responsible party and installer of Banners, except: in lieu of installation by the City or Village forces, the installation or any part thereof may be performed by a contractor hired and directly supervised by the City or Village.
  - (2) Banners are allowed only within the City or Village corporate limits.

b. Size and Installation Dimensions:

- (1) Pole Mounted Banners shall be limited to a surface area of 20 square feet per pole.
  - (i) Up to two American Flags may be added per pole provided the American Flags do not exceed 24 square feet per flag.
  - (ii) All banners and American Flags purchased on or before the effective date of this policy that do not conform to these size requirements will be allowed to be used until January 1, 2007.
- (2) Over-the-Highway Banners shall not be more than three feet wide. The length will be sufficient to fit between the poles to which it is affixed.
- (3) If the Pole Mounted Banner is in an area with curbs the following two options exist:
  - (i) If the banner is behind the face of the curb, the bottom of the banner shall be at least eight feet above the elevation of the sidewalk or ground.
  - (ii) If the banner extends beyond the curb, the bottom of the banner shall be at least twelve feet six inches (12' 6") above the shoulder and no closer than four feet from the nearest driving lane, as measured from the white line.
- (4) If the Pole Mounted Banner is in an area without curbs the following two options exist:
  - (i) If the banner overhangs a sidewalk or ground that is not a shoulder, the bottom of the banner shall be at least eight feet above the elevation of the sidewalk or ground and not closer than four feet from the edge of the nearest driving lane, as measured from the white line.
  - (ii) If the banner overhangs the shoulder of the highway, the bottom of the banner shall be at least twelve feet six inches (12' 6") feet above the elevation of the shoulder and not closer than four feet from the edge of the nearest driving lane, as measured from the white line.
- (5) Over-the-Highway Banners shall vertically clear the pavement by at least 18 feet and there shall be only one for each entrance to the City or Village.
- (6) In any instance where a local ordinance is more restrictive the local ordinance will prevail.

c. Spacing:

- (1) Banners shall not be within 50 feet of a stop sign that is used for stopping traffic on the highway.
- (2) Banners shall not be within 50 feet of a traffic signal.

d. Material: Banners shall be made of durable material.

e. Appropriate Message: The banner shall not have displayed thereon any service, consumer good, message, legend, symbol, notations, slogans or identifying feature which:

- (1) may be construed to advertise, promote the sale of, or publicize any merchandise or commodity,
- (2) identifies any living person, or,
- (3) identifies any private company, private corporation or private business, whether they are for profit or non-profit.

f. Banners to be Placed on Existing Poles: The banners must be attached to a pole which is permanently located in the right of way and conforms to the following requirements:

- (1) A load rating analysis, signed and sealed by a registered professional engineer, may be required when banners are to be placed on light poles that contain a breakaway device.

- (2) The District Engineer, in the District in which the banner is located, will decide if the load rating analysis is necessary.
- (3) If necessary, the load rating analysis shall certify that the specific light poles, which are used to support the banners, will handle the additional load placed on the structures by the banner and attachments, and will not exceed the loading design requirement of the light pole.
- (4) Copies of load rating analysis previously submitted are acceptable for subsequent applications if all conditions remain the same.
- (5) A utility pole not owned by the State or City may be considered for affixing Banners only upon the express written consent of the owner of the pole.

g. Illumination:

- (1) Illumination will be allowed only on pole mounted holiday decorations in which beams or rays of light are not directed at any portion of the traveled way or which are not of such intensity or brilliance as to cause glare or to impair the vision of the driver of a motor vehicle.
- (2) All other banners will not be illuminated.

h. Duration:

- (1) Pole Mounted Banner permits are valid for one year, unless terminated by either party.
- (2) Over-the-Highway Banner permits are valid for a period of time not to exceed four weeks before the event and shall be removed not more than two days after the event; however, Over-the-Highway Banners shall not occupy the right-of-way for a total duration of more than 50 days.

4. Restrictions and Limitations

- a. **Highways On Which Banners Are Not Allowed.** Banners will not be allowed on freeways or Interstate highways.
- b. **Placement Supports.** No banners shall be attached to:
  - (1) Traffic control devices such as signal poles.
  - (2) Sign structures.
  - (3) Bridges or overpass structures.
- c. **Ramp Terminals.** Banners may not be placed within 500 feet of the end of the ramp terminal on highways with interchanges.
- d. **Sight Obstructions.** No banner shall obstruct the view of traffic or any traffic control devices.
- e. **Obstructing Traffic.** No banner shall be allowed to obstruct, impede or endanger the flow of traffic.
- f. **Resemble traffic control signs, signals, marking devices.** Banners shall not appear to direct the movement of traffic, obscure, or interfere with the effectiveness of, imitate or resemble any official traffic signal, sign or device or otherwise be a traffic hazard or distraction.
- g. **Construction Projects.** In the event future highway construction or maintenance requires any alteration, relocation or removal of the banner, the City or Village shall perform such work as requested and without expense to the NDOT.
- h. **Removal by NDOT.** Banners may be removed by NDOT at any time, after 30 day written notice, if in the sole discretion of the NDOT, the banner is damaged, faded, neglected, becomes unsightly, or does not comply with

the requirements of this policy. The City or Village shall reimburse the NDOT its costs to remove any Banner that is not promptly removed by the City or Village after notice from the NDOT. The removed Banners will be stored in the nearest NDOT Maintenance Yard for 30 days after removal.

5. Permit Requirements are the same as for any other use or occupancy of the State Highway right-of-way, which are:
  - a. **Application.** The City or Village must complete the appropriate application form. The form may be obtained at <http://dot.nebraska.gov/business-center/permits/row/banners/> or by contacting the District Engineer.
  - b. **Restrictions and Specific Instructions.** The NDOT may prescribe and define any terms and conditions deemed necessary and/or in the best interest of the public.
  - c. **Approved Permit.** The City or Village must have an approved permit before commencing any work on the right-of-way
  - d. **Indemnify and Hold Harmless:** The City or Village agrees to accept full responsibility to the public for loss or damage caused by their installation, operation, maintenance or removal of Banners on the highway right of way. The City or Village will hold the State harmless from any suits brought against the State arising out of the installation, occupancy, or removal of any Banner on the State's right-of-way. The City or Village will, when required by the State, provide or cause to be provided proper insurance coverage for public protection and employee protection during installation, maintenance or removal of any Banner.
  - e. **Safety Measures:** The City or Village will be solely responsible for all appropriate safety measures to be taken when installing, maintaining and removing banners to ensure the safety of the traveling public as well as the safety of those installing or removing the banners.
  - f. **Traffic Control Measures:** The traveling public shall be protected from the activities of the City or Village by means of signs, flagmen and traffic control devices as determined by the City or Village in accordance with the Manual of Uniform Traffic Control devices for Streets and Highways and in accordance with any traffic control plans that are attached to the permit.
  - g. **Cancellation/Revocation of Permit:** The permit issued by the NDOT may be cancelled or revoked, after 30 days written notice, when the NDOT has actual knowledge that the City or Village has failed to comply with the provisions of the permit or this Policy. In the event that the City or Village has failed to remove any Banners upon request by the NDOT, the NDOT reserves the right to remove any or all Banners at the expense of the Village or City. The removed Banners will be stored in the nearest NDOT Maintenance Yard for 30 days after removal.
  - h. **Performance Guarantees:** Performance Guarantees for Banner Permits will be waived for Cities and Villages, except when the past performance of the City or Village on previous banner permits requires the necessity of a Performance Guarantee.