

CHAPTER XXIV

HIGHWAY RIGHT-OF-WAY ENCROACHMENT

Wyoming Department of Transportation **Highway Right-of-Way Encroachment**

CHAPTER 24

PREAMBLE

~~W.S. 1-26-813 allows public utilities to be constructed and maintained along State highways; W.S. 6-6-401 through 6-6-407 makes it unlawful to conduct disruptive activities on State property and requires establishment of policies, rules and regulations therefor; W.S. 35-10-401 makes it unlawful to injure, obstruct or conduct trade upon State highways; and the Federal Highway Administration (FHWA) requires the observance of rules on access and highway use as a condition of participation in federal-aid. These rules are necessary to implement and administer these statutes and requirements in a consistent and uniform manner.~~

Section 1. Authority and Purpose.

These rules are promulgated by authority of W.S. 24-2-105 and W.S. 6-6-303 to administer encroachment into the rights-of-way of state highways consistent with state and federal law, including W.S. 6-6-301 through W.S. 6-6-307.

Section 2. Definitions.

(a) “Agreement” means a contract between the Department and another party identifying in detail the terms of an encroachment.

(b) “Department” means the Wyoming ~~State Highway~~ Department of Transportation.

(c) “Encroachment” means any facility above or below ground within the boundaries of the highway rights-of-way ~~that is~~ and owned and maintained by a party other than the Department.

(d) “License” means a permit to encroach ~~(Department Form No. E-54).~~

(e) “No-access line” means a line that ~~may or may not coincide with the right-of-way line which cannot be crossed for access to any portion of the right-of-way between said lines.~~ No-access lines may not coincide with right-of-way lines.

(f) “Traveled way” means that portion of the highway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

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(c) “Encroachment” means any facility above or below ground within the boundaries of highway rights-of-way and owned and maintained by a party other than the Department.

(d) “License” means a permit to encroach.

(e) “No-access line” means a line that cannot be crossed for access to any portion of the right-of-way. No-access lines may not coincide with right-of-way lines.

(f) “Traveled way” means that portion of the highway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Section 3. Interstate Encroachment.

Parallel encroachments on interstate rights-of-way for purposes other than serving a highway facility are generally not permitted. Under extenuating circumstances application may be made to the Department and forwarded to the FHWA for consideration. Such encroachment, if allowed, requires an official relocation of the no-access line and requires any access for maintaining the facility to occur from outside the no-access line.

Section 4. Public Utility Encroachment.

(a) State law allows public utilities to be placed in highway rights-of-way. The Department shall grant permission when the owner completes and submits Form M-54 to the

Department district office where the facility is to be installed. If the facility extends into more than one district, then Form M-54 shall be submitted to each district. The owner, **not an agent, contractor, or consulting firm**, shall execute the Form M-54. This form shall provide that the facility be constructed in a manner conforming with applicable federal, state, and local laws and regulations. The Department may also require accommodations to address local terrain, onsite materials, and traffic conditions.

(b) Facilities requiring periodic maintenance or inspection by work crews shall be placed outside the right-of-way and shall have a designated access point.

Section 5. **Railroads.**

Railroad encroachment shall be covered by an agreement setting forth in detail the location, type of construction, insurance coverage, traffic control, and maintenance responsibilities. Requests from industrial users for spur tracks shall be submitted through the railroad company rather than directly from the industrial user.

Section 6. **Private Utility.**

(a) Parallel utility runs within Department rights-of-way by private parties are generally prohibited unless unusual hardship or extenuating circumstances make construction outside the right-of-way extremely difficult, costly, or impossible. Private party utilities are allowed to cross Department roadways when runs are installed to Department specifications.

(b) The Department shall consider permission for parallel encroachment for transmission line companies with condemnation authority (W.S. 1-26-814) if the encroachment does not otherwise interfere with right-of-way use for highway purposes. A special agreement is required specifying access rights for construction and maintenance, detailed alignment and grade information, specific construction procedures around Department structures, and provision for inspection when deemed necessary. Access to utility lines outside the right-of-way where a no-access line is maintained shall not be allowed, nor shall utility maintenance be done from highway rights-of-way.

Section 7. **Landscape License.**

(a) Beautification of the right-of-way by adjacent landowners or local municipalities is allowed when it does not compromise the highway's safety or integrity. Any firm or individual wishing to modify the right-of-way shall submit a request on Form M-26 to the Department district office for the area in which the property is located.

(b) Landscaping shall be for aesthetic purposes only and shall not be used for business or residential purposes.

(c) Drainage shall be maintained through a landscape area. All shrubbery or trees planted in the right-of-way shall be at least 50 feet from the edge of traveled ways in rural areas and consistent with surrounding property in urban areas. Setback for all shrubbery shall meet local municipal codes and shall not restrict sight distance beyond the minimum established by the Department.

Section 8. Signs, Awnings, Canopies, Marquees, and Other Intrusion.

(a) No signs, canopies, marquees, or similar installations shall be erected on or protrude into the right-of-way in rural areas except for official signs marking buried pipeline or cable.

(b) Within the corporate limits of a city or town as designated by the Department, erection of awnings, canopies, marquees, and on-premises advertising signs shall be allowed subject to the following:

(i) The sign, awning, canopy, or other installation shall be supported totally from a building or supports outside the right-of-way.

(ii) The right-of-way line shall be within 4 feet of the face of the building from which the business is conducted.

(iii) The roadway section at the point in question shall have a curb and gutter.

(iv) The farthest protrusion into the right-of-way shall be at least 2 feet behind the back of the curb.

(v) The vertical clearance shall not be less than that required by the ordinance of the nearest city. Desirable vertical clearance is 10 feet, but consideration shall be given for a lower clearance based on justification and site conditions.

(c) The protrusion of signs, canopies, and other installations into the right-of-way is an illegal encroachment and shall not be permitted unless all the preceding criteria of this section are met. Encroachments meeting the preceding requirements shall be permitted if, in the Department's judgment, the installation does not in any manner detract from the effectiveness of official traffic control devices or constitute a traffic hazard.

Section 9. Substructures.

Within a city commercial area, but not a rural commercial area, substructures existing prior to February 17, 1983, may be considered as permitted encroachments if the farthest

protrusion, above ground or underground, does not extend beyond the back of the curb. Whenever a street is widened, protrusions shall be reduced to no more than 5 feet into the right-of-way or to a point at least 2 feet behind the back of the curb, whichever is less. No new encroachments shall be allowed.

Section 10. Access Driveways.

Rules governing access driveways are prescribed in Chapter 13, Access Facilities.

Section 11. Seismographic Activity.

(a) Drilling, blasting, or any type of parallel seismographic investigations that disrupt highway operations and maintenance shall not be allowed within any right-of-way.

(b) Laying temporary cable across interstate or other highways shall be permitted with the following provisions.

(i) Written approval shall be obtained from the district engineer 2 weeks before using the right-of-way. The company, by signing Form M-23, Seismographic Cable Crossing License, shall agree to:

(A) release the Department from liability for accident or injury;

(B) meet traffic control requirements of the Department;

(C) accept the license expiration date;

(D) run cables through existing culverts if available in the area. If culverts do not exist within 1,000 feet in either direction, cables may cross the roadway if the cables are:

(I) firmly secured,

(II) removed daily, and

(III) adequately signed and flagged; and

(E) if work vehicles are parked 35 feet or more from the edge of the traveled way within the right-of-way.

(ii) Any violation to the preceding provisions of this section shall result in a 90-day suspension in the use of right-of-way regardless of whether the company had

previous written approval. Suspension shall be considered as binding statewide, not just in the area where the violation occurred.

Section 12. Removal.

(a) Department rights-of-way shall remain inviolate from encroachments without a permit issued by the Department. Any use of the right-of-way interfering with highway construction or maintenance or safe use by the traveling public shall be considered an unlawful encroachment.

(b) Encroaching property causing an immediate hazard to the public shall be removed immediately by either the owner or the Department. Any encroaching property not causing an immediate hazard shall be deemed abandoned and removed by the Department if the owner cannot be determined after 48 hours. If subsequent ownership can be proven, the property shall be released upon payment of removal and storage costs. After 30 days the Department shall dispose of the property.

(c) Any person violating these rules is subject to prosecution pursuant to the provisions of W.S. 6-6-305.

Section 13. Caveat.

Granting of a license by the Department in conformance with these rules does not convey any title interest in the land covered or affected by the license. The licensee assumes all responsibility for title clearance when occupying highway right-of-way.

Section 2 3. Interstate Encroachment.

Parallel encroachments on interstate rights-of-way for purposes other than serving a highway facility are generally not permitted. Under extenuating circumstances application may be made to the Department and forwarded to the FHWA for consideration. Such encroachment, if allowed, requires an official relocation of the no access line and requires any access for ~~maintenance to maintaining~~ the facility to ~~be occur~~ from outside the no access line.

Section 3 4. Public Utility Encroachment.

(a) ~~Public utilities are entitled by statute~~ State law allows public utilities to be placed in highway rights-of-way. The Department shall grant permission ~~will be granted~~ when the owner completes and submits Form ~~EM-54~~ ~~has been completed by the owner and submitted to the highway district office~~ Department district office where in whose area the facility is to be installed. If the facility extends into more than one district, then Form E ~~M-54~~ ~~must~~ shall be submitted to each district. The owner, not an agent, contractor, or consulting firm shall execute Form ~~EM-54~~ ~~must be executed by the owner and not by an agent, contractor or consulting firm~~. This form Form E-54 shall provide that the facility will be constructed in a manner conforming with applicable federal, state, and local laws, codes and ordinances and regulations. Department requirements shall also be stipulated as necessitated by local conditions of terrain, materials, and traffic. The Department may also require accommodations to address local terrain, onsite materials, and traffic conditions.

(b) Facilities requiring periodic maintenance or inspection by work crews shall be placed outside the right-of-way and shall have a designated access point.

Section 4 5. Railroads.

Railroad encroachments from railroads shall be by an agreement setting forth in detail the location, type of construction, insurance coverage, traffic control, and maintenance responsibilities. Requests from industrial users for spur tracks ~~must~~ shall be submitted through the railroad company rather than directly from the industrial user.

Section 5 6. Private Utility.

(a) Parallel utility runs within Department rights-of-way by private parties are generally prohibited unless unusual hardship or extenuating circumstances make construction outside the right-of-way extremely difficult, costly, or impossible. Private ~~parties~~ party utilities are allowed to cross Department roadways when ~~they are~~ installed to Department specifications.

(b) The Department shall consider ~~In the case of transmission line companies with condemnation authority (W.S. 1-26-814)~~ permission for parallel encroachment for transmission line companies with condemnation authority (W.S. 1-26-814) may be considered if the encroachment it does not otherwise interfere with the use of the right-of-way use for highway purposes. A special agreement is required specifying ~~rights of access~~ rights to for construct and maintain construction and maintenance, detailed alignment and grade information, specific construction procedures around Department structures, and provision for inspection when deemed necessary. Access to utility lines outside the right of way where a no access line is maintained shall not be allowed, nor shall utility

maintenance be done from highway rights-of-way.

Section 6 7. Landscape License.

(a) Beautification of the right of way by adjacent landowners or local municipality is allowed when it does not compromise the highway's integrity and safety or integrity of the highway. Any firm or individual wishing to modify the right of way ~~must~~ shall submit ~~their~~ a request on Form M-26 to the Department district office for the area in which the property is located.

(b) Landscaping shall be for aesthetic purposes only and shall not be used for business or residential purposes. ~~The paving of any portion of the right of way for business, parking or display of merchandise is prohibited.~~

(c) Drainage ~~must~~ shall be maintained through a landscape area. All shrubbery or trees planted in the right-of-way shall be at least 50 feet from the edge of traveled ways in rural areas and consistent with surrounding property in urban areas. Setback for all shrubbery shall meet local municipal codes, and shall not restrict sight distance ~~below~~ beyond the minimum established by the Department.

Section 7 8. Signs, Awnings, Canopies, Marquees, and Other Intrusion.

(a) No signs, canopies, marquees, or similar installations ~~are to~~ shall be erected on or protrude into the right-of-way in rural areas except for official signs marking buried pipeline or cable.

(b) Within the corporate urban limits of a city or town as designated by the Department, ~~the~~ erection of awnings, canopies, marquees, and on-premises advertising signs ~~will~~ shall be allowed subject to the following:

(a)(i) ~~(a)~~ (i) The sign, awning, canopy, ~~etc.~~ or other installation shall be supported totally from a building or supports outside the right-of-way.

(b)(ii) ~~(b)~~ (ii) The right-of-way line ~~must~~ shall be within ~~eight (8)~~ 4 feet of the face of the building from which ~~the~~ business is conducted.

(c) (iii) The roadway section at the point in question ~~must~~ shall have a curb and gutter.

(d) (iv) The farthest protrusion into the right-of-way shall be at least 2 feet behind the back of the curb.

(e) (v) The vertical clearance shall not be less than that required by the ordinance of the nearest city, ~~or ten (10) feet, whichever is greater.~~ Desirable vertical clearance is 10 feet, but consideration shall be given for a lower clearance based on justification and site conditions.

(c) The protrusion of signs, canopies, ~~etc.~~ and other intrusion into the right-of-way is an illegal encroachment and ~~will~~ shall not be permitted unless all ~~of the above~~ preceding criteria of this section are met. Encroachments meeting the ~~above~~ preceding requirements shall be permitted if, in the

~~judgment of the Department's judgment, the installation does not by reasons of color, placement, or~~
in any manner detracts from the effectiveness of official traffic control devices or constitutes a traffic hazard.

Section 8 ~~9~~. Substructures.

Within a city commercial area, but not a rural commercial area, substructures existing prior to February 17, 1983, ~~the filing of these rules~~ may be considered as permitted encroachments provided that if the farthest protrusion, above ground or underground, does not extend beyond the back of the curbside of the sidewalk. Whenever a street is ~~to be~~ widened, protrusions shall be reduced to no more than ~~five~~ (5) feet into the right-of-way or to a point at least ~~two~~ (2) feet behind the back of the curb face of curb, whichever is less. No new encroachments ~~will~~ shall be allowed.

Section 9 ~~10~~. Access Driveways.

Rules governing access driveways are prescribed in Chapter ~~XIII~~ 13, Access Facilities.

Section 10. Seismographic Activity.

(a) Drilling, blasting, or any type of parallel seismographic investigations that disrupt highway operations and maintenance shall ~~will~~ not be allowed within any right-of-way.

(b) ~~The~~ Laying of temporary cable across interstate, ~~primary and secondary~~ or other highways ~~will~~ shall be permitted with the following provisions.

~~(a)~~(i) Written approval shall be obtained from the district engineer two 2 weeks prior to before using the right-of-way. The company, by signing Form M-23, Seismographic Cable Crossing License, shall have agreed to:

- (I) release the Department from liability ~~in the event of an~~ for accident or injury;
- (ii) meet traffic control requirements of the Department;
- (iii) accept the an license expiration date;
- (iv) run cables through existing culverts if ~~there is one~~ available in the area. If culverts do not exist within 1,000 feet in either direction, cables may cross the roadway if the cables are:
 - ~~the cable is~~ firmly secured
 - ~~the cable is~~ removed daily, and
 - ~~the cable is~~ adequately signed and flagged; and
- (v) ~~not to park work vehicles within the right-of-way if work vehicles are parked 35 feet or more from the edge of the traveled way within the right-of-way.~~

(ii) Any violation to the ~~above~~ preceding provisions for this section shall ~~will~~ result in a 90-day suspension ~~of in~~ the use of the right-of-way regardless of whether the company had previous ~~permission written approval~~. Suspension shall be considered as being binding statewide, not just in the area where the violation occurred.

~~Section 11. Conducting Business From the Right-of Way. Under no circumstances shall any business or other commercial activity be transacted, nor permits issued for the transaction of any type of business or commercial activity on rights-of-way.~~

Section 12. Removal.

(a) Department rights-of-way shall remain inviolate from encroachments without a permit issued by the Department. Any use of the right-of-way ~~which interferes~~ interfering with highway construction or maintenance ~~of the highway~~ or safe use by the traveling public shall be considered an unlawful encroachment.

(b) Encroaching property causing an immediate hazard to the public shall be removed immediately by either the owner or the Department. Any encroaching property not causing an immediate hazard ~~shall be deemed abandoned and removed by the Department and where the~~ if the owner cannot be determined after 48 hours ~~shall be deemed to be abandoned and shall be removed by the Department~~. If subsequent ownership can be proven, the property ~~will~~ shall be released upon payment of removal and storage costs. After 30 days the Department shall dispose of the property ~~in accordance with the rules of the Department of Administration and Fiscal Control (DAC).~~

(c) Any person ~~in violation of~~ violating these rules is subject to prosecution pursuant to the provisions of W.S. ~~6-6-405~~ 6-6-305.

Section 13. Caveat.

Granting of a license by the Department in conformance with these rules does not ~~imply convey~~ any title interest in the land covered or ~~effected~~ affected by the license. ~~being vested be in the Department, and~~ The licensee assumes all responsibility for title clearance when occupying highway right-of-way.