

COUNTY OF JACKSON POLICY MANUAL

TRANSPORTATION

Policy 8090

RIGHT OF WAY ENCROACHMENT REMOVAL POLICY

I. Purpose:

The Board of Jackson County Commissioners establishes procedures for the use of public highways under its jurisdiction and based on its responsibility for the maintenance of a roadway system that is reasonably safe and convenient for public travel. Unauthorized encroachment into the right of way can create unsafe conditions, as well as problems for maintenance of the road, drainage, and authorized utilities.

II. Information:

- A. In the interest of highway safety, Public Act 368 of 1925 (as amended), prohibits the placement of any object within the highway right-of-way without a permit.
- B. In some instances, property owners or contractors encroach on road right of way by placing fences, rocks/boulders, trees/shrubs, unauthorized mailboxes, earthworks, underground sprinklers, underground utilities/devices or other objects as a measure of enhancing or protecting the property. However, these objects may be vision obstructions, hazards to motorists, and/or public safety vehicles, or interfere with drainage and/or public utilities.
- C. The Department of Transportation may remove any encroachment, whether permanent or temporary, placed without permit within the county road right-of-way. By statute, costs for the removal may be recovered from the property owner/occupant. This policy establishes procedures for the proper execution of such removal.

III. Procedure:

- A. When the Department of Transportation discovers an encroachment, they will investigate. If that investigation determines that the encroachment is a safety hazard, interferes in the maintenance of the roadway, or interferes with roadside drainage or utilities, the Department of Transportation will contact the owner/occupant and request that it be removed. In so doing, the Department of Transportation may seek to find a compromise that allows the requested use by the owner/occupant, if such compromise meets safety requirements and ensures the Department of Transportation's

- ability to maintain the road, drainage, utilities, and other purposes of the right of way.
- B. If the owner/occupant does not remove or modify the encroachment as requested within a reasonable time, the Department of Transportation will bring the matter before the County Board of Commissioners. In bringing the matter before the Board, the Department of Transportation will explain why the encroachment should be removed, what efforts have been made to resolve the issue with the owner/occupant, and present a proposed removal order.
 - C. A proposed removal order submitted to the Board for approval must contain the following information:
 - 1. The name of the road
 - 2. The township, section, and fraction of the section (ex. "the southern half of the northwestern quarter of Section 13, Summit Township")
 - 3. The width of the paved portion of the road
 - 4. The width of the right of way
 - 5. A description of the encroachment
 - 6. A specific direction that the encroachment be removed within 30 days, or a longer period if appropriate (in no circumstances may it be less than 30 days)
 - D. If approved by the Board, the Department of Transportation will serve the order on the owner/occupant by certified mailing, restricted delivery to addressee only, return receipt requested, or by personal service. The time limit specified in the order begins to run when the order is served.
 - E. If the owner/occupant denies in writing the existence of the encroachment or the existence of a highway before the time period specified in the order expires, the Department of Transportation may not proceed with removal. A trespass action must be filed in court instead.
 - F. If the owner/occupant does not deny in writing the existence of the encroachment or the existence of a highway or remove the encroachment within the time period specified in the order, the Department of Transportation may remove the encroachment. Such removal must be completed in a manner that causes the least possible damage to the land, or loss to the owner.
 - G. In order to recover expenses, specific records must be kept of costs incurred in removing the encroachment. An affidavit fully detailing those expenses, and including a full legal description of the land, must be presented to the owner/occupant along with the bill for the expenses. The owner/occupant must be given at least 30 days to pay the bill. The Department of Transportation will serve the affidavit and bill on the owner/occupant by certified mailing, restricted delivery to addressee only, return receipt requested, or personal service. The payment due date is calculated from the date of service.

- H. If the owner/occupant does not pay the amount due by the date specified on the bill, the Department of Transportation will provide a verified copy of the affidavit and bill to the township clerk. The clerk will assess and levy on the lands described in the statement the amount detailed in the bill, and will collect the amount assessed and levied in the same manner as taxes.

Adopted: 7/23/2008
Revision: 10/20/2020