

Policy & Procedure HF 99-02 Encroachment

A.) PURPOSE

Due to the ever increasing number of reports pertaining to encroachments in public rights-of-way, it has become necessary to set forth a policy and procedural guidelines for processing said reports in a timely manner. Said policy shall apply to all encroachment reports, whether originated by County staff, other public agencies, or private individuals. Obstructions and encroachments within the public right-of-way are subject to regulation pursuant to Ordinance No. 012-94, the Cochise County Right-of-Way Use Permit Ordinance, and A.R.S 28-7053 and 28-7054. For the purpose of this policy, "public rights-of-way" shall include all of the roads designated for county maintenance by the Cochise County Board of Supervisors, and all other roads in the unincorporated areas that have been transferred, in whole or in part, to the County or to the public by deed, plat, or grant of easement. These rights-of-ways will be broken into two categories, being those that are maintained by the County and those that are not maintained by the County.

B.) PROCEDURE

1.) ENCROACHMENT PROCEDURE FOR MAINTAINED COUNTY ROADS

- a.) When a report of an encroachment is phoned into the office, the caller will be directed to submit the request in writing. When a written request is received, it will be directed to the appropriate E.T.S. staff to be formally logged into the encroachment file. Central Files will then be reviewed to see if a permit has been issued for the identified location. If a permit was issued, and the improvement determined not to be in compliance, the permit and report will be forwarded to the Encroachment Inspector to pursue.
- b.) In the event that the encroachment is not permitted, additional research and coordination with Planning & Zoning will be initiated, and a review of the road status will be completed. A field review will then be conducted to ensure that the encroachment is located within the public right-of-way, and a determination will also be made as to whether or not the encroachment poses a serious threat to the safety and welfare of the traveling public. The Highway Superintendent, the Operations Manager, and/or the Director will make this determination as necessary. In the event that the encroachment is determined to be a threat to the motoring public and/or the County roadway, a work order for removal will be issued. In the event that the encroachment requires immediate action, however, the roadway personnel are hereby authorized to proceed to remedy the situation under the direction of the Operations Manager, or his designee, and are to keep appropriate records for all costs involved in

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said removal. The responsible party will then be notified of the County's action, billed accordingly, and will be subject to further action for damages as necessary.

- c.) If the encroachment does not pose a serious threat to the safety and welfare of the traveling public, the responsible party will be notified by certified mail, return receipt requested, of the need to remove the encroachment within a specified time frame. If the encroachment is not removed as directed, a work order for the removal may be issued and County forces may see to the removal and bill the responsible party accordingly.
- d.) If it is not possible to determine the party responsible for the encroachment, notice of the County action will be posted at the site of the encroachment in accordance with A.R.S. 28-7054.
- e.) In the event that the encroachment constitutes the storing of vehicle(s) in the public right-of-way, the responsible party may be notified by certified mail, return receipt requested, of the need to remove the vehicle. If the encroachment is not removed, this department will then notify the dispatch center of the County Sheriff's Department, at OPX 9500 ext.0 of the need to remove the encroachment. The removal will then be pursued by that department. In the event that the location of the vehicle presents a serious problem, the Sheriff's Department will be notified and advised of the need for immediate removal.
- f.) When the encroachment is a public utility relocation necessitated by a Capital Improvement Project or a 94-49, the matter will be turned over to the Project Manager to resolve.
- g.) When a non-utility encroachment affects a Capital Improvement Project or a 94-49, Operations staff will identify those encroachments that need to be removed and/or relocated. A written request will go to the appropriate Project Manager and it will be the Manager's responsibility to coordinate with the encroachment inspector to ensure the removal/relocation of the encroachments in the public right-of-way
- h.) In the event that the responsible party challenges the County's claim to the public right-of-way in question, the matter will be referred to the Right-of-Way Division and a review of the right-of-way will be initiated in accordance with Operating Policy 98-01.

2.) ENCROACHMENT PROCEDURE - NON-MAINTAINED PUBLIC RIGHT-OF-WAY

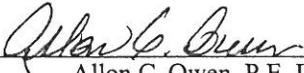
- a.) When a written report of an encroachment on a non-maintained roadway is received, it will be given to the Right-of-Way Division for an initial determination as to the legal status of the roadway. If the roadway is not public, the Encroachment Inspector will issue a response stating that no further action will be taken. If determined to be a public right-of-way, the area of the encroachment will be checked for a permit and if a permit exists, the matter will go to the Encroachment Inspector to resolve.
- b.) If a permit does not exist, a field review and determination will be requested as described in Section 1.b. In accordance with Ordinance 012-94, the County Engineer is directed not to pursue technical violations which do not constitute a clear and present danger to the public health and safety. Therefore once this determination has been made, and in regard to those encroachments determined not to be a danger, a letter will be sent to the responsible party directing the removal of said encroachment as a matter of record. At this point the encroachment report will be closed out.
- c.) Encroachments in this category which do pose a danger will be pursued as stated in section 1.b. and vehicular storage will be pursued as stated in section 1.e.
- d.) In regard to those encroachments which prevent the public from using the public right-of-way, this department will notify the responsible party by certified mail, return receipt requested, that the encroachment is an illegal use of the public right-of-way and needs to be removed. This department will then initiate removal of the encroachment as necessary, and bill the responsible party accordingly. This Department does not have the resources to attempt to resolve continuing land disputes between neighboring property owners that involve the use of non-maintained public roads. In the event that the actions specified above are not sufficient to resolve any such dispute, the matter may be referred to the County Attorney.
- e.) In sections 2.b., 2.c., and 2.d. above, if it is not possible to determine the party responsible for the encroachment, notice of the County action will be posted at the site of the encroachment in accordance with A.R.S. 28-7054.
- f.) In regard to public alleys created by recorded plat and/or docket, it will be the policy of this department to actively pursue the systematic abandonment of the public interest in said alleys, while retaining private easement rights for ingress, egress and utilities. Until such time as this is accomplished, processing encroachments in public alleys will be in accordance with Section 2.

- g.) Real estate and political signs placed in the right-of-way may be immediately removed by departmental staff. Staff responsible for said removal will then be required to notify the affected realtor, or politician, of the removal and advise where they can pick up their sign.

3.) BILLING PROCESS FOR ENCROACHMENT REMOVAL AND FEE STRUCTURE

- a.) Once an encroachment has been removed, the road yard personnel, or entity responsible for affecting the removal, will submit a billing for time and materials. In the event of removal by County staff, labor and equipment hourly rates will be in accordance with the DMG-Maximus Report. The Administration Division will then mail out a billing to the party responsible for the encroachment.
- b.) In the event that the encroachment billing is still outstanding after sixty days, and in the event that alternate arrangements have not been agreed to, the matter may be referred to the County Attorney's Office for subsequent legal action.

The procedure as set forth in this policy shall become effective and revised as of this 8th day of February, 2002.



Allon C. Owen, P.E. Director