

NOTICE OF PROPOSED GUIDANCE DOCUMENT

Encroachments (DTSD99)

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on Encroachments (DTSD99), WI STAT Ch. 86, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website:

<https://trust.dot.state.wi.us/act369/?id=DTSD99&uri=https://wisconsindot.gov/Pages/doing-bus/real-estate/roadsides/encroachments.aspx&division=DTSD&tags=86>

2. Mailing written comments to:

Division of Transportation System Development
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7965
Madison, WI 53707-7965

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsindot.gov to allow for ongoing comment.

AGENCY CONTACT

dotdtsdguidancedocs@dot.wi.gov



State of Wisconsin Department of Transportation

Encroachments

Highway maintenance

Roadsides

Adopt-A-Highway

Car-Killed Deer

Encroachments

Roadside memorials

Sponsorship

Description

An encroachment is any unauthorized object located partially or wholly within the state highway right of way. It includes, but is not limited to, items in the three categories below. Examples are also shown for reference.

Fixed objects

- awnings
- buildings
- crops
- decks/porches/patios
- ditches/embankments
- fences
- flagpoles
- raised garden beds
- retaining walls
- septic systems
- signs
- stairs/railings
- wells



Portable message sign



Steps

Movable objects

- banners
- campers
- garbage dumpsters
- illegally parked vehicles
- junk
- pennants/flags
- portable signs
- roadside memorials
- tables and chairs
- trailers
- signs



Vegetable stand



Real estate sign

(Both encroachments block critical sight stance at the intersection)

Unpermitted uses

- driveways
- off-road vehicle paths
- parking lots
- sidewalks



Fence



Landscaping rocks

What is the highway right of way?

The highway right of way is the area needed for traffic lanes, shoulders, ditches and errant vehicle recovery. On a rural 2-lane highway, some people believe this distance is 66 feet. This is not true in many situations. Only when no government acquisition records exist, state law (for nearly the last century) **presumes** the government owns a 66-foot wide right of way as an easement.

Most state highways, however, are much wider than 66 feet. In fact, it is not unusual for highway right of way to be irregularly shaped, or for the roadway itself to not be centered in the right of way depending on the highway's operational and maintenance needs.

Interstates and freeways have a wider right of way than 2-lane highways, which can be anywhere from 200-300 feet on average. WisDOT highway fences are not "boundary fences." Generally, they are a minimum of 3-5 feet on the roadway side of the right of way line.

In urban areas, boulevard medians, traffic lanes, bike lanes, curb & gutter, terraces and sidewalks are part of the right of way. Also, there are locations in some urban areas where WisDOT's right of way extends right to a building foundation or wall of an adjoining property.

For examples of rural 2-lane, interstate/freeway, and urban right of way, see  [drawings](#).

How do I know where the right of way is?

Contact the real estate section in a [WisDOT transportation region office](#) to request a right of way plat. For complete accuracy, hire a registered land surveyor to check existing land records and physically establish the right of way boundary adjacent to your property. This is the best way to prevent encroachments.

Encroachment risks

Encroachments may pose potential safety hazards to motorists, cause damage to state property, or lead to claims of adverse possession. Property owners that fail to remove encroachments in a timely manner when directed by WisDOT may be subject to penalties pursuant to Wis. Stat. [s. 86.04](#), [s. 86.021](#), and [s. 86.022](#), and may be liable for treble (triple) damages pursuant to Wis. Stat. [s. 86.02](#). In addition, a person injured by an illegal encroachment in a highway accident may have a claim for damages against the person held accountable for the encroachment.

Mailboxes

Mailboxes and newspaper tubes along with their supports are encroachments that are typically allowed in the right of way. Since their general location is adjacent to the shoulder or curb, it is highly likely that vehicles will strike them. Therefore, they must be built to break away or yield if struck to protect the safety of the motoring public. Highway authorities follow similar guidelines when constructing road signs. For example, holes are commonly drilled through 4" x 6" wood posts near their base so they will break-off at the hole in the event of an accident.

Examples of hazardous mailboxes:



Examples of good installations:





Mailboxes constructed or protected with materials such as bricks, milk canisters filled with concrete and/or rocks, large timbers, or utility poles create a hazard. Property owners may receive a letter from WisDOT to remove the hazardous mailbox and replace it with an acceptable installation. See [☞ Mailbox Safety](#) to learn about safe mailbox construction. If these standards are violated, property owners may be liable for injuries caused by the improperly constructed mailbox and/or support(s).

Improperly placed signs

Advertising signs are prohibited on WisDOT right of way and are subject to immediate removal. These include political/campaign signs. See [improperly placed signs](#) for additional information regarding this encroachment type.

WisDOT policy

WisDOT and county highway departments (working under contract to perform WisDOT maintenance) are responsible for removing encroachments from state highways. WisDOT will generally take action to remove encroachments shortly after discovery, which may occur during routine maintenance operations, prior to or during a highway improvement project (especially if WisDOT acquires new land with the project), or when brought to WisDOT's attention by an accident, occurrence or complaint.

Encroachments that are moveable objects may simply be removed from the right of way. Sometimes, these items will be moved onto an abutting property owner's land. Encroaching vehicles might be ticketed and/or towed. Fixed objects, pavements and portable items that are more difficult to move may lead to WisDOT issuing a removal order.

Sometimes, WisDOT does not take action to remove an encroachment. When this occurs, it may be that WisDOT is unaware of the encroachment, or has determined that it does not interfere enough with the safety, operation and maintenance of the highway to have it removed. This lack of action should not infer that the encroachment is harmless.

Revocable occupancy permit

Under unusual circumstances, typically in urban areas, a [revocable occupancy permit](#) may be issued for an **existing** encroachment, which will allow the encroachment to remain. The issuance of a revocable occupancy permit is treated as an exceptional case and not the rule or policy. An encroachment is allowed to remain by permit if all of the following criteria are met, i.e., the encroachment:

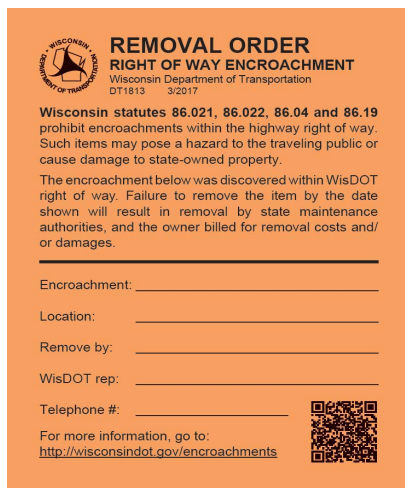
- will not impair highway function or maintenance, or interfere with the safe and free flow of traffic.
- is of a permanent nature or is actively used and properly maintained.
- does not conflict with the broader public interest.

Notwithstanding the above criteria, a revocable occupancy permit may not be issued for a free-standing sign or outdoor advertising structure located totally within WisDOT right of way. By contrast, in an urban area where the highway extends right to the base of a building, WisDOT may permit a small sign attached to a building that overhangs a sidewalk.

Occupying excess right of way or property (land)

WisDOT occasionally owns more land than it needs for an existing state highway. For example, where a freeway is planned, WisDOT may purchase enough land for the freeway and only build two lanes initially. The remaining land is left idle until the other lanes are constructed. Generally, lands reserved in that manner would be expensive to repurchase if sold. WisDOT will sometimes rent such lands for parking or other temporary uses that will not interfere with eventual use of the lands for highway purposes. Market rental rates are assessed. In these situations, a lease is used in lieu of a revocable occupancy permit.

For more information



Questions regarding the use of highway lands should be directed to the real estate section in the appropriate [WisDOT transportation region office](#).

If WisDOT is planning a new highway project, one of the early steps in the process is to identify and remove highway encroachments. A WisDOT representative will contact a property owner if encroachments are discovered prior to or during a highway improvement project. During the project, the WisDOT project manager on the construction site can take direct questions.

Encroachments discovered during routine maintenance operations may have an encroachment removal order placed on the item. The removal order will be in the form of an orange sticker and will have the name and telephone number of the WisDOT representative to

contact for more information.