



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

RECEIVED _____

**APPLICATION / RENEWAL FOR
ENCROACHMENT PERMIT
For Encroachment in Existence
on or Before January 1, 2005**

See attached instructions and other information, including applicable regulations.

New Application (\$100 fee) Renewal/Change of Owner (\$100 fee) Other _____

Please Print or Type

<input type="checkbox"/> Governmental Agency		<input type="checkbox"/> Business		<input type="checkbox"/> Private	
Applicant Name:				Phone:	
E-mail Address:					
Business / Organization Name:				Phone:	
E-mail Address:		Business License #:			
Mailing Address (include City and Zip Code): <input type="checkbox"/> Business <input type="checkbox"/> Private					
Physical Address (include City and Zip Code):					
Legal description of adjoining property (attach separate sheet if necessary):					
Assessor's tax identification number for adjoining property:					
Do you own the property adjoining the right-of-way? <input type="checkbox"/> Own <input type="checkbox"/> Lease (if lease, provide name & complete mailing address of landowner in this box.)					
Location of the Proposed Permit Area (road name, milepost, nearest cross street, etc.):					
Proposed use of the right-of-way (Describe here. Attach site plan showing location of improvements and attach at least three photographs. See attached instructions.):					
Are any permanent structures located completely in the right-of-way?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there any water and sewer facilities?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is there a tank of any size in the right-of-way? Please give volume & contents.				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Size of Proposed Permit area (minimum 1,000 square feet):			How many feet from the edge of the pavement will the proposed improvement be located?		
Applicant's Certification					
I certify that the encroachment existed on or before January 1, 2005, and that it was erected in the good faith belief that it was lawful to erect and maintain it in its location. I further certify that denial of this permit would pose a hardship on me. I have read the instructions and certify that all the above information and all attachments I have provided are true and correct. I agree and understand that an Encroachment Permit can be denied or a bond required for nonpayment of prior or present permit fees. I agree and understand that an Encroachment Permit may be revoked based upon a written determination by the Federal Highway Administration that federal funding requirements applicable to outdoor advertising have been violated.					
Applicant Signature: _____				Date: _____	

INSTRUCTIONS AND OTHER INFORMATION

Thank you for your interest in the Right-of-Way (ROW) Encroachment Permit Program. An encroachment may remain installed within a highway ROW if authorized by the Alaska Department of Transportation & Public Facilities (DOT&PF) through an Encroachment Permit. A permit is valid for a term of no more than five years and is revocable. A permit is subject to applicable state, federal, and municipal laws.

Encroachment Permits at No Cost for Government Agencies Not Acting in a Business Capacity

17 AAC 10.011(a) allows Encroachment Permits at no cost for local, state, and federal agencies that are not acting in a business capacity. Permitted uses include flags of states or nations, decorative banners, and signs, without logos or names of sponsors, that are intended to inform motorists that they are entering a municipality, community, or state. The agency requesting a permit under this provision must sign an indemnification clause in the permit to hold DOT&PF harmless. DOT&PF may deny a permit if it would cause a safety risk for the traveling public

Encroachment Permits for Owners or Lessees of Land Contiguous to Right-of-Way (Including Government Agencies Acting in a Business Capacity)

17 AAC 10.011(b) – (c) allow Encroachment Permits for owners or lessees of land contiguous to the ROW, including government agencies acting in a business capacity. An Encroachment Permit may be issued for any lawful use, **with six exceptions:**

1. any permanent structure located partially or completely in the ROW;
2. a new water and sewer facility that is not permitted under a utilities permit (17 AAC 15);
3. a tank of any size;
4. fueling facilities;
5. a use that is not in the State's best interest; and
6. a land use on a ROW that allows development on contiguous land that would not otherwise be possible without the use of the ROW.

Encroachment Permits for Commemorative Plaques, Historical or Interpretive Markers, and Informational Signs

An Encroachment Permit may be issued at no cost to a government agency for the installation in highway rest stops or pullouts of commemorative plaques, historical or interpretive markers, and informational signs. The plaques, markers, and signs may be permitted only if they cannot be read from the highway.

NOTE: For (1) a Beautification Encroachment Permit or (2) an Encroachment Permit for Advertising on Bus Benches, Bus Shelters, and Adjacent Trash Receptacles, use the applicable application form for those permits.

Request for Encroachment Permit

A request for an Encroachment Permit must include a **\$100 nonrefundable processing fee**, a complete application and the following information:

(1) A Detailed Site Layout / Site Plan (*attach a separate sheet*):

- ❖ Show the business location, parking, access into the business, and location of the building where business is conducted.
- ❖ Show how far each existing improvement will be located from the edge of traveled way.
- ❖ Show all the existing major attributes of the area such as vegetation, utilities, bike-paths, road advisory signs, etc.
- ❖ Show all the roads by name and show other pertinent landmarks.

NOTE: If the Regional Chief ROW Agent believes it is necessary, DOT&PF may require the applicant to furnish drawings stamped by a professional engineer registered in Alaska.

(2) Required Photographs (*there should be a minimum of three photographs*):

Attach photographs of the location of each existing improvement. Photos should show the view of the main highway turn-off to the business. They should show the slope, typically taken from a distance of 100 feet in each direction and one photo taken from the centerline of the highway toward the improvement's location. These photos will be used in determining if additional slope limit information is required to determine the clear zone. Mark an arrow on the photo depicting your turn-off and indicate the location of each improvement.

If the applicant is a business, it shall possess no illegal signs, driveways, or other unpermitted ROW activities or improvements. No signs will be permitted within the permit area. Storage of flammable, explosive, or hazardous material is prohibited within the permit area.

Fee Determination

The Permittee must pay fair market value or a \$100 annual fee for the use of the land, whichever amount is greater. The Permittee is responsible for costs incurred for hiring a State certified appraiser for the preparation of a Narrative Appraisal Report, if an appraisal is required.

Public Notice

Public notice is required if DOT&PF determines it to be in the best interest of the State. DOT&PF has the discretion to require notice if the issuance of the permit may be controversial, or if public notice would be beneficial to the adjudication process. The Permittee is responsible for the cost of this notice.

Change of Owner

If the permitted encroachment changes ownership, the new owner needs to attach a copy of the existing permit and provide proof of ownership of adjoining property and rights under the permit.

Definitions

“Clear zone” is the total roadside border area, starting at the edge of the traveled way, that should be maintained free and clear of any obstructions to the traveling public. The desired width of the clear zone is dependent upon the traffic volumes, speeds and the roadside geometry.

“Traveled way” is defined as the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes such as those used for parking, turning, climbing or other purposes supplementary to through traffic movement.

Please mail or take your application to:

Southeast Region Mailing Address: DOT&PF ROW 6860 Glacier Hwy Juneau AK 99801-7909 Voice: (907) 465-4540 or 1-800-575-4540 Fax: (907) 465-3506 TDD: (907) 465-4410	Central Region Mailing Address: DOT&PF ROW PO Box 196900 Anchorage AK 99519-6900 Voice: (907) 269-0700 or 1-800-770-5263 Fax: (907) 248-9456 TDD: (907) 269-0473	Northern Region Mailing Address: DOT&PF ROW 2301 Peger Road Fairbanks AK 99709-5316 Voice: (907) 451-5400 or 1-800-475-2464 Fax: (907) 451-5411 TDD: (907) 451-2363
Southeast Region Physical Address: DOT&PF ROW 6860 Glacier Hwy Juneau AK 99801-7909	Central Region Physical Address: DOT&PF ROW 4111 Aviation Drive Anchorage AK 99502-1058	Northern Region Physical Address: DOT&PF ROW 2720 Picket Place Fairbanks AK 99709

ALASKA STATUTES

Excerpts Relating to Encroachment Permits in Existence on or before January 1, 2005

AS 19.25.105. Limitations of outdoor advertising signs, displays, and devices.

....

(d) Outdoor advertising may not be erected or maintained within the right-of-way of an interstate, primary, or secondary highway except that outdoor advertising

(1) on bus benches and bus shelters, and adjacent trash receptacles, located within the right-of-way under the authority of a permit issued under AS 19.25.200 is allowed if the bus benches or bus shelters are located within a borough or unified municipality and the buses that stop at that location operate during the entire year; or

(2) present in the right-of-way on January 1, 2005, may remain, subject only to removals required by federal highway funding requirements imposed on the state by federal law, until or unless an encroachment permit for the outdoor advertising is denied under AS 19.25.200(c).

AS 19.25.200. Encroachment permits; liability. (a) An encroachment may be constructed, placed, changed, or maintained across or along a highway, but only in accordance with regulations adopted by the department. An encroachment may not be constructed, placed, maintained, or changed until it is authorized by a written permit issued by the department, unless the department provides otherwise by regulation. The department may charge a fee for a permit issued under this section.

(b) The provisions under (a) of this section do not apply to a mailbox or a newspaper box attached to a mailbox.

(c) Upon receipt of an application, the department shall issue an encroachment permit to a private person, a government agency acting in a business capacity, or an owner or lessee of land contiguous to the right-of-way for an encroachment that, on January 1, 2005, was present within the right-of-way of an interstate, primary, or secondary highway and is not authorized by a written encroachment permit if the department finds that

(1) the encroachment does not pose a risk to the traveling public, and the integrity and safety of the highway is not compromised;

(2) the applicant has demonstrated the encroachment was erected with the good faith belief it was lawful to erect and maintain the encroachment in its location;

(3) the denial of the encroachment permit would pose a hardship on the person, agency, owner, or lessee who applies for the permit;

(4) the issuance of an encroachment permit will not cause a break in access control for the highway;

(5) the land will not be necessary for a highway construction project during the initial term of the permit; and

(6) issuance of a permit is consistent with federal requirements regarding encroachments on federal-aid highways.

(d) The department may not remove an encroachment present within the right-of-way of an interstate, primary, or secondary highway on January 1, 2005, unless the owner, occupant, or person in possession of the encroachment or any other person causing or permitting the encroachment to exist receives the notice provided under AS 19.25.230 and is informed of the application process for an encroachment permit under (c) of this section. The department may charge a fee, not to exceed \$100, for an encroachment permit issued under (c) of this section. An encroachment permit issued under (c) of this section may contain reasonable conditions to protect the traveling public, the safety and integrity of a highway's design, and the public interest.

(e) The land area described in an encroachment permit may not be used to meet minimum requirements for a contiguous land use under applicable municipal land use standards or under applicable regulations adopted by the Department of Environmental Conservation. The use of land contiguous to the land area described in the permit must satisfy the applicable municipal land use standards and applicable regulations adopted by the Department of Environmental Conservation without regard to the land area described in the permit.

(f) The issuance of an encroachment permit under AS 19.25.200 - 19.25.250 does not entitle the owner, occupant, or person in possession of the encroachment or any other person to a payment of compensation or of relocation benefits under AS 34.60 if the encroachment permit is revoked or not renewed or if the encroachment must be changed, relocated, or removed under AS 19.25.200 - 19.25.250.

(g) The state is not liable for damage to, or damage or injury resulting from the presence of, an encroachment in the right-of-way of a state highway.

ADMINISTRATIVE CODE
Title 17 -- Chapter 10
Excerpts Relating to Encroachment Permits

17 AAC 10.010. ENCROACHMENTS. An encroachment may be installed within a highway right-of-way if the encroachment has been permitted by the department under this chapter.

17 AAC 10.011. TYPES OF ENCROACHMENTS AUTHORIZED. (a) The department may issue at no cost an encroachment permit for use of a highway right-of-way by a municipality, state agency, or federal agency, subject to any conditions imposed under 17 AAC 10.014, if the municipality or agency is not acting in a business capacity. The permit will be issued on a form that the department prescribes. Permitted uses include

(1) flags of states or nations;

(2) decorative banners; and

(3) signs, without logos or names of sponsors, that are intended to inform motorists that they are entering a municipality, community, or state.

(b) The department may issue an encroachment permit for the use of a highway right-of-way by a private person, or by a government agency acting in a business capacity, to an owner or lessee of land contiguous to the highway right-of-way where the owner or lessee's primary activity occurs, if the use complies with the requirements of 17 AAC 10.012, and the use is allowed under (c) of this section. The department may impose permit conditions under 17 AAC 10.014. An encroachment permit issued under this subsection is valid for a term of no more than five years for a specific use. The department may renew the permit for additional subsequent terms of no more than five years each. The permit will be issued on a form that the department prescribes. A permit applicant must pay a \$200 nonrefundable application fee. In addition, the permittee must pay economic rent established under 17 AAC 10.013, or \$100 annually, for the use of the land, whichever amount is greater. A permittee must pay a nonrefundable \$100 reapplication fee each time the permittee files a request to renew the permit. Upon renewal of the permit, the permittee must pay economic rent, as established under 17 AAC 10.013 as of the date of extension, or \$100 annually, whichever amount is greater. The department may revoke an encroachment permit before the end of its term, after notice issued to the permittee at least 30 days before the date of revocation. The issuance of a permit under AS 19.25, or this chapter does not entitle the permittee to a payment of just compensation or relocation benefits under AS 34.60, if a permit is revoked or a request for renewal is denied.

(c) An encroachment permit issued under (b) of this section allows any lawful use except the following:

(1) any permanent structure located partially or completely in the right-of-way;

(2) water and sewer facilities that the department has not permitted under 17 AAC 15;

(3) a tank of any size;

(4) fueling facilities;

(5) repealed 3/1/2002;

(6) a use not in the best interest of the state; and

(7) a land use on a highway right-of-way that allows development on contiguous land that would not otherwise be possible without the use of the highway right-of-way.

(d) The land area described in the encroachment permit may not be used to meet minimum requirements for a contiguous land use under applicable municipal land use standards or under regulations adopted by the Department of Environmental Conservation. The contiguous land use must meet those minimum requirements without regard to the land contained within the encroachment permit. The use of the land described in the encroachment permit must be an accessory use to the contiguous land use.

(e) After the completion of construction of a highway, the department may, subject to 17 AAC 10.014, issue at no cost an encroachment permit in the form of a beautification permit to a government agency, a municipality, an individual, or a non-profit organization to allow planting of trees, shrubs, grasses, or flowers, and any structures necessary to support the plants, that do not endanger motorists, bicyclists, or pedestrians within the highway right-of-way. A beautification permit will be issued on a form that the department prescribes. The department may attach to a beautification permit any condition that is necessary to protect the integrity and safety of a highway's design, and to protect the traveling public or the persons planting trees, shrubs, grasses, and flowers within the highway right-of-way. The department may remove trees, shrubs, grasses, or flowers planted in a highway right-of-way, or structures supporting the plants, under a beautification permit that become a hazard to the traveling public, interfere with a highway's maintenance or operation, interfere with construction on a highway, or threaten to damage a highway embankment.

(f) The department may issue an encroachment permit on a form it prescribes, at no cost to a government agency for the installation in highway rest stops or pullouts of commemorative plaques, historical or interpretive markers, and informational signs. The plaques, markers, and signs may be permitted only if they cannot be read from the highway.

(g) The provisions of this section do not apply to driveway permits issued under 17 AAC 10.020, utility permits issued under 17 AAC 15, or the installation of mail boxes, including newspaper boxes, within a highway right-of-way.

(h) The department may issue under (b) of this section an encroachment permit for an existing structure or a portion of that structure or for existing water or sewer facilities for which the department has not issued a utility permit issued under 17 AAC 15, if

- (1) the encroachment does not present a risk to the health or safety of the public;
- (2) the construction of the encroachment occurred in good faith; and
- (3) the denial of the permit would create a hardship for the owner of the encroachment.

17 AAC 10.012. APPROVAL REQUIREMENTS FOR ENCROACHMENTS. The department will, in its discretion, grant an encroachment permit under 17 AAC 10.011, if the department determines that

- (1) the integrity and safety of the highway is not compromised;
- (2) the issuance of the permit will not cause a break in access control for the highway;
- (3) the land will not be necessary for a highway construction project during the initial term of the permit; and
- (4) issuing the permit is in the best interest of the state.

17 AAC 10.013. ESTABLISHING ECONOMIC RENT. For purposes of 17 AAC 10.011(b), the department will establish economic rent for a right-of-way held in fee simple by the use of commonly accepted real estate appraisal techniques. For rights-of-way held as easements, the consideration for the issuance of the permit is 90 percent of the economic rent established under this section for a right-of-way held in fee simple. A permittee shall reimburse the department for appraisal costs incurred to determine economic rent.

17 AAC 10.014. ADDITIONAL CONDITIONS UPON ENCROACHMENT PERMITS. The department will, in its discretion, impose conditions upon encroachment permits necessary to protect the traveling public, the safety and integrity of a highway's design, the public interest, and the best interests of the state.

17 AAC 10.015. REMOVAL AFTER EXPIRATION OF ENCROACHMENT PERMIT. Upon the expiration of the term of an encroachment permit issued under 17 AAC 10.011, or upon the revocation of an encroachment permit by the department, a permittee is responsible for the cost of removing improvements placed within the right-of-way, at no cost of the department, unless the permit provides that the encroachment may remain in place after the permit expires or is revoked.