



ADMINISTRATIVE RULES OF MONTANA



18.7.105 ENCROACHMENTS ON NON-CONTROLLED ACCESS HIGHWAY RIGHT-OF-WAY

- (1) No private use of non-controlled access highway right-of-way shall be allowed, except under department-issued encroachment permits.
- (2) Overhanging Encroachments - Private advertising signs, eaves, marquees and similar devices may overhang the right-of-way, provided:
 - (a) the overhanging device is within an incorporated city, or is under the jurisdiction of another local unit of government which has ordinances or regulations allowing such overhang, and the overhanging device is in compliance with such ordinances or regulations;
 - (b) the overhanging device does not conflict with, or interfere with, traffic control signs, signals, or other devices, or with highway construction or maintenance operations, or with the public's use of the right-of-way;
 - (c) ground-mounted structures supporting the overhanging device must be located entirely off the public right-of-way; and
 - (d) The outermost portion of the overhanging device must be at least two feet behind the curb or curblane in horizontal distance, and at least seven and one-half feet above the top of the curb, sidewalk, or roadway shoulder elevation in vertical distance.
- (3) Underground Encroachments - Private underground facilities other than utilities, such as vaults, access and transportation tunnels, and sidewalk freight entrances may be allowed within the highway right-of-way, provided:
 - (a) the underground facility is located within an incorporated city, or is under the jurisdiction of another local unit of government which allows such use under promulgated ordinances or regulations, or by special agreements;
 - (b) the underground facility is in compliance with the local jurisdiction's ordinances, regulations, or special agreements;
 - (c) the ordinance, regulation, or special agreement allowing such underground use of the public right-of-way contains a revocation clause requiring that the owner shall either remove the encroaching facility at the owner's sole expense, or pay any difference in costs of construction upon receiving appropriate notice that removal or adjustment is deemed necessary and must be accomplished; and
 - (d) the facility does not interfere with highway construction or maintenance operations, or with the use of the right-of-way by the traveling public.

- (4) At-grade Encroachments and Maintenance of Area Adjacent to Traveled Way - Private and public noncommercial use and maintenance of at-grade highway right-of-way may include, but is not limited to the following:
 - (a) General object or device encroachment permits may be allowed in the right-of-way provided the design is reviewed and approved by the department. At-grade objects or devices may include, but are not limited to, fences, gates, buildings, signs, markers, or other structures.
 - (b) Landscaping may be allowed in the right-of-way when the area between the property line and the curb line is proposed by abutting property owners for planting trees, shrubs, grass, and similar uses, provided:
 - (i) the use is generally allowed within the city or other area under the jurisdiction of a local unit of government;
 - (ii) the use is not commercial or for profit and does not interfere with highway construction or maintenance operations, or with the public use of the right-of-way;
 - (iii) the trees, shrubs, or other vegetation are of species that will not damage the street, curbs, or sidewalks; and
 - (iv) the use complies with applicable safety policies or standards adopted and promulgated by the American Association of the State Highway and Transportation Officials (AASHTO). A copy of the AASHTO standards may be obtained from the department.
 - (c) Bus shelters may be allowed in the right-of-way in urban areas provided the design is reviewed and approved by the department. Commercial advertising on bus shelters must comply with department outdoor advertising control rules.
 - (d) Mailboxes may be allowed in the right-of-way, but must meet standards defined and reviewed by the department.
 - (e) Other delivery boxes such as newspaper boxes may be allowed in the right-of-way, but must comply with the department standards and rules.
- (5) Occupancy Encroachments - Private and public noncommercial occupancy and use of highway right-of-way by individuals or groups of individuals may include, but is not limited to:
 - (a) special use permits (e.g., parades, pedestrian, or bicycle events);
 - (b) encroachment permits for work to be conducted within highway right-of-way limits; or
 - (c) foraging permits, for harvesting of agricultural crops within the highway right-of-way limits.
- (6) Other types of encroachments not listed in the rules may be reviewed on a case-by-case basis and the department may issue an encroachment permit as appropriate.

Authorizing statute(s): 60-3-101, 60-6-101, 61-8-203, MCA

Implementing statute(s): 60-3-101, 60-6-101, 61-8-203, 61-8-706, 61-8-712, MCA

History: Eff. 12/31/72; AMD, 1992 MAR p. 1868, Eff. 8/28/92; AMD, 2014 MAR p. 2828, Eff. 11/21/14.