

Sec. 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.

Sec. 19.25.210. Relocation or removal of encroachment.

If, incidental to the construction or maintenance of a state highway, the department determines and orders that an encroachment previously authorized by written permit must be changed, relocated, or removed, the owner of the encroachment shall change, relocate, or remove it at no expense to the state, except as provided in [AS 19.25.020](#), within a reasonable time set by the department. If the owner does not change, relocate, or remove an encroachment within the time set by the department, the encroachment shall be considered an unauthorized encroachment and subject to the provisions of [AS 19.25.220](#) - 19.25.250.

Sec. 19.25.220. Unauthorized encroachments.

If an unauthorized encroachment exists in, on, under, or over a state highway, the department may require the removal of the encroachment in the manner provided in [AS 19.25.230](#) - 19.25.250.

Sec. 19.25.230. Notice of removal.

Except as otherwise provided in [AS 19.25.200](#), 19.25.210 and 19.25.240, notice shall be given the owner, occupant, or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving upon any of them a notice demanding the removal of the encroachment. The notice must describe the encroachment complained of with reasonable certainty as to its character and location. Service of the notice may be made by certified mail.

Sec. 19.25.240. Summary removal.

The department may at any time remove from a state highway or road an encroachment that obstructs or prevents the use of the highway or road by the public.

Sec. 19.25.250. Removal after noncompliance; removal expense.

After a failure of the owner of an encroachment to comply with a notice or demand of the department under the provisions of [AS 19.25.200](#), 19.25.210 and 19.25.230, the department may remove, or cause to be removed, the encroachment, and the owner of the encroachment shall pay to the department

- (1) the expenses of the removal of the encroachment;
- (2) all costs and expenses paid by the state as a result of a claim or claims filed against the state by third parties for damages due to delays because the encroachment was not changed, removed, or relocated according to the order of the department; and
- (3) costs and expenses of suit.