
SUBJECT: ORDINANCE #2015-2 (RIGHT OF WAY ENCROACHMENT)

ADOPTED DATE: SEPTEMBER 8, 2015

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PURPOSE

The purpose of this policy is to prohibit encroachments, obstructions, signs, and hay within the right of way. These encroachments and obstructions have negative impacts on the safety and function of our roads, ditches, and right of way. In addition, a majority of the Cass County highways are on the Federal Aid System. Cass County is responsible for preventing right of way encroachments regarding county highway projects funded through the Federal Aid Highway program, pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

GENERAL PROVISIONS

The NDDOT is, according to Title 23 United States Code and 23 CFR 1.27, required to maintain, or cause to maintain, all federally funded highway projects. Title 23 United States Code 101 defines maintenance as: "...the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway."

Title 23 further requires a State transportation department to maintain each project constructed with Federal-aid funds until such time that it no longer constitutes a part of the Federal-aid system. It is the Federal Highway Administration's (FHWA) role to see that maintenance of Federal-aid projects is adequate and to provide technical assistance in disseminating information on successful maintenance techniques.

It is the policy of the NDDOT to require all county and city projects receiving federal dollars to enter into an agreement with the Department to ensure that as recipients of federal money the counties and cities agree to abide by the terms and conditions required. The agreement will require counties receiving federal funds to provide an annual certification that all federally funded highway projects constructed are being maintained as required.

In addition, the North Dakota Century Code (N.D.C.C.) has several sections that refer to right of way encroachments, obstructions, signs, and hay. This policy consolidates these codes and outlines their enforcement. The following sections of the N.D.C.C. are references for this policy:

N.D.C.C. 24-01-12 Regulation of advertising signs on highways.

N.D.C.C. 24-01-12.2 Hay disposal

N.D.C.C. 24-05-23 Encroachment upon county roads, ditches, approaches - Liability for damages.

N.D.C.C. 24-05-24 County and township road rights of way - Removal of obstructions.

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N.D.C.C. 24-06-29 Removal of permanent obstructions - Removal of obstructions and traffic safety hazards - Cost.

N.D.C.C. 39-10-07.2 Display of unauthorized signs, signals, or markings

N.D.C.C. 63-05-01 Landowners or operators along county and township highways to cut weeds and grasses.

ADMINISTRATION

Marking the Right of Way: Right of way boundaries will be marked with right of way markers. Markers will be generally placed at the section line and quarter line, or other locations where the right of way changes or deviates. When installing right of way markers in a previously unmarked area, the Cass County Engineer will send out a notice to the adjacent landowner regarding the placement of markers and the encroachment policy. Those landowners damaging or removing highway right of way markers will be held responsible for the repair or replacement of the markers as discussed below.

Inspecting the Right of Way: The County will perform routine inspections for right of way encroachments in late summer and fall, with re-inspections in the spring or as necessary. Efforts will be made to enforce right of way encroachments prior to seeding or after harvest. However, if necessary, the County may take steps to enforce the right of way prior to harvest.

Notification of Right of Way Encroachments: The Cass County Commission authorizes the County Engineer or his designee to notify landowners in writing regarding any right of way encroachment.

Remediation of Right of Way Encroachments: In accordance with N.D.C.C. 24-05-23, the landowner must remove the encroachment within twenty days of receipt of this notice. The County Engineer may authorize a landowner to deviate from the twenty day requirement in order to allow the landowner until the end of harvest season to correct the encroachment. Corrective action will include, but not be limited to, replacement of approved or recommended grass seed and mulch as well as correction of slopes or ditches that have been altered as a result of the encroachment. Failure to remedy this situation will cause the landowner to be liable to the County for damages resulting from the encroachment. If the landowner fails to correct the encroachment, the County will complete the necessary work to repair the encroachment and the landowner will be billed for the cost associated with correcting the damages. The landowner may also be billed for damages to right of way markers or County signs. If the bill remains unpaid for two consecutive months, the bill will be certified to the County Auditor and all of the expenses shall be charged against the land and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected.

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Safety: When a right of way encroachment poses an imminent safety threat, the County will take necessary action to remove the encroachment. When possible, attempts will be made to notify the landowner to remove the encroachment. If the County incurs a cost to remove the encroachment, the cost may be levied against the landowner as stated above.

Obstructions in the Right of Way: In accordance with N.D.C.C. 24-06-29, if a person places or causes to be placed an obstruction or traffic safety hazard within the right of way of any highway road surface, the board of County Commissioners, County Engineer, or his designee shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of County Commissioners, County Engineer, or his designee shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or traffic safety hazard is responsible and may be billed for any costs incurred by the County for removal of the obstruction or traffic safety hazard. These obstructions or hazards may include, but are not limited to signs, landscaping timbers, rocks, or other hazards. In addition, landowners are not authorized to push snow into the right of way and ditches of County highways which include the roadway in-slope, ditch bottom, and back-slope of the roadway. This practice can exaggerate drifting problems experienced on highways and can create obstructions for motorists. If a landowner is notified of an unauthorized snow pile, they are responsible for removing the obstruction. The County will only notify the landowner once during the winter season. Costs incurred to remove any future obstructing snow piles will be levied against the landowner.

Harvesting Hay in the Right of Way: Every person harvesting hay on the County right of way, who stores the harvested hay on the right of way for later removal, shall store the harvested hay at the outer edge of the rights of way. The County Engineer may remove any hay that is not stored safely as prescribed above. All hay stored on the right of way must be removed by November first of each year.

Unauthorized Signs: N.D.C.C. 24-01-12 (regulation of advertising signs on highways) outlines that private signs are not authorized in the right of way. It also states that signs or billboards on private property cannot be placed within one thousand feet of any highway grade crossing in such a manner as to obstruct or interfere with a free and clear view of such crossing from any highway or railroad intersecting threat. The Cass County Commission authorizes the County Engineer or his designee to notify landowners, sign companies, or any persons placing an unauthorized sign in writing regarding the right of way encroachment. Any advertisement in or upon a public highway or private property which is deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic, may be taken down, removed, or destroyed by direction of the County Engineer or his designee.

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Landowners Responsibility to Maintain Right of Way: N.D.C.C 63-05-01 (Cutting weeds and grasses on highways) states it is the duty of landowners or operators with land adjoining regularly traveled County roads to cut all weeds and grasses along the regularly traveled County roads adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. Further, N.D.C.C. 63-05-03 states that any cost the County incurs due to a landowners failure to mow can be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

APPROVED:

ss/Chad M. Peterson
Chad M. Peterson, Chairman
Board of Commissioners
County of Cass

ATTEST:

ss/Michael Montplaisir
Michael Montplaisir
Cass County Auditor

(SEAL)

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