

**BARRY COUNTY ROAD COMMISSION**  
**1725 West M-43 Highway**  
**Hastings, MI 49058**

**Right-of-Way Encroachment Removal Procedures**

**I. PURPOSE**

To establish procedures governing the use of roadside areas under the jurisdiction of the Board of County Road Commissioners based on its responsibility to maintain a roadway system that is reasonably safe and convenient for public travel.

**II. INFORMATION**

In the interest of highway safety, Michigan Law (1925 PA. 368, as amended, MCLA 247.171) prohibits the placement of any object within the highway right-of-way without a permit from the road authority.

In many instances, property owners or contractors place fences, rocks/boulders, trees/shrubs, unauthorized mailboxes, earthwork, underground sprinkler systems, underground utilities/devices or other objects within the road right-of-way as a measure of enhancing or protecting the property. However, these fixed objects often become vision obstructions, hazards to motorists or interfere with drainage and/or public utilities.

Any structural or ornamental object, whether permanent or temporary, placed within the county road right-of-way without a permit from the Barry County Road Commission (“Road Commission”) shall be subject to removal. Further, any costs incurred by the Road Commission may be recovered from the property owner(s) by statute.

**III. PROCEDURE**

**Step 1:** When an object or obstruction is identified and reported to the Road Commission, the object will be classified by the complainant as a potential roadway safety hazard, vision or drainage obstruction, etc. Information concerning the object and the person reporting the encroachment will be entered into an Encroachment Log and forwarded to the designated staff in the Engineering and/or Operations Department for action.

**Step 2:** Within 45 days from the date the object was reported, an investigation will be performed by the designated staff in the Engineering and/or Operations Department to determine if the object is a safety hazard or interferes in the maintenance of the roadway surface or roadside drainage. Field measurements and photographs of the object may be taken.

If, in the opinion of the Managing Director an object poses an imminent danger to the public, the Managing Director may immediately seek an Encroachment Removal Order and proceed to have the object removed at the expense of the property owner(s).

**Step 3:** Upon completion of the investigation, the complainant will be notified by mail or, in the alternative, by telephone if any remedial action is to be taken to remove the object.

**Step 4:** If the object is to be removed, the property owner(s) of record will be notified by certified mail that an encroachment has been identified on his/her property. The property owner(s) will be informed that he/she has 14 days to contact the Road Commission and remove the object or the Board of County Road Commissioners may issue an Encroachment Removal Order requiring the object to be removed at the property owner(s) expense. The property owner(s) will also be informed that any objection to the removal must be in writing and delivered to the main office of the Road Commission.

**Step 5:** If the object has not been removed within 14 days, the Board of County Road Commissioners will consider an Encroachment Removal Order requiring the property owner(s) to remove the object within 30 days. If approved, the Order will be sent to the property owner(s) by certified mail or personal service.

**Step 6:** If the object has not been removed within 30 days from the date of service of the Order, the Road Commission will have the object removed at the expense of the property owner(s). However, if within the 30-day time period, the property owner(s) denies the existence of the encroachment by written notice, the Board of County Road Commissioners may commence an action of trespass instead of removing the object.

#### **IV. GUIDANCE TO BCRC STAFF**

Encroachments on roads with speed limits of less than 40 mph should typically not be considered a safety hazard.

Encroachments that most likely would not cause severe damage if struck by the motoring public or a Road Commission vehicle should typically not be considered a safety hazard.

This policy shall be enforced through public request, BCRC driver/operator request or when damage occurs as a result of BCRC operations.

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

**BARRY COUNTY ROAD COMMISSION**  
**1725 West M-43 Highway**  
**Hastings, MI 49058**

**ENCROACHMENT REMOVAL ORDER**

“Moved...

WHEREAS, a \_\_\_\_\_ is present in front of the residence at \_\_\_\_\_ Road, approximately \_\_\_\_\_ feet from the \_\_\_\_\_ side of \_\_\_\_\_ Road in the \_\_\_\_\_ quarter of Section \_\_\_\_\_ in \_\_\_\_\_ Township, and,

WHEREAS, \_\_\_\_\_ Road is a \_\_\_\_\_ foot wide County road and the \_\_\_\_\_ is within the road right-of-way, and

WHEREAS, in the opinion of the Board of County Road Commissioners, this structure is a safety hazard to the motoring public.

BE IT RESOLVED that the Barry County Road Commissioners orders that this structure be removed thirty (30) days after service of this order.

BE IT FURTHER RESOLVED that this encroachment will be removed after thirty (30) days by employees of the Barry County Road Commission in such a manner as to cause the least damage to the property or loss to the owner and shall recover from the owner the cost and expenses of such removal as authorized by Statute

Property Owner:

Carried.”

I hereby certify that the foregoing is a true  
And correct copy of a resolution approved by  
The Board of County Road Commissioners of  
The county of Barry at their regular  
Meeting held on \_\_\_\_\_, 2006.

\_\_\_\_\_  
Gary Vandecar, Office Manager

November 1, 2006

Joe Smith  
1234 ABC Blvd.  
Hastings, MI 49058

Re: \_\_\_\_\_Encroachment at \_\_\_\_\_Road, Section \_\_\_\_\_, \_\_\_\_\_ Township, Barry County, MI

Dear Mr. Smith:

It has been brought to the attention of the Barry County Road Commission that you have placed/constructed/installed a \_\_\_\_\_ within the road right-of-way on \_\_\_\_\_ Road. According to Michigan Law (1925 P.A. 368, as amended, MCLA 247.171), obstructions and encroachments on public roadways are prohibited. As a result, we are requesting that you remove the encroachment within fourteen (14) days.

If the encroachment is not removed within fourteen (14) days we will seek an Encroachment Removal Order from the Board of County Road Commissioners of Barry County. This Order will require you to remove the encroachment or the Road Commission will have it removed at your expense. Pursuant to MCLA 247.172, you will be liable for the costs and expenses of such removal.

If you have any questions, or need additional information, please contact me at (269) 945-3449. Any objection to this removal must be received in writing at the above address within fourteen (14) days from the receipt of this letter.

Sincerely,

Douglas E. Peck  
Operations Engineer

November 1, 2006

Joe Smith  
1234 ABC Blvd.  
Hastings, MI 49058

**NOTICE**

On November 21, 2006 the Board of County Road Commissioners of Barry County approved the enclosed Encroachment Removal Order. In the interest of public safety and State laws, the Barry County Road Commission shall, on or after \_\_\_\_\_, 2006 remove the \_\_\_\_\_ that lies(s) within the \_\_\_\_\_ foot right-of-way of \_\_\_\_\_, said obstruction located \_\_\_\_\_.

Accordingly, the Barry County Road Commission requests your cooperation in removing the stated obstruction placed in the right-of-way of \_\_\_\_\_ in front of your home or property which is deemed hazardous under Public Act 1951, 12, being MCLA 224.21, Sec. 1, and Public Act 1925, 368, Sections 1, 2, 10, 11 12 and 20, being MCLA 247.171, 247.172, 247.180, 247.181, 247.182 and 247.190.

In the event the Road Commission is required to do the work, Public Act 1925, 368, Section 2, requires the Road Commission keep an accurate accounting of the expenses it incurred in carrying out the law and to present affected owners a full and complete statement of expenses it incurred in removing hazardous objects or obstructions from the right-of-way and to therefore require the owner to pay the amount set forth in the statement.

Said Act further states: "If the owner shall refuse or neglect to pay the amount set forth in the statement within thirty (30) days after such notice and demand for payment is presented, the Barry County Road Commission shall present a verified copy of the statement to the Clerk of the Township of \_\_\_\_\_, Barry County, Michigan, who shall then assess the land and collect the expenses in the same manner as other taxes are collected."

If you have any questions regarding this matter, do not hesitate to call me at (269) 945-3449.

Sincerely,

Douglas E. Peck  
Operations Engineer