



TOWN OF NANTUCKET ENCROACHMENT POLICY

Effective Date: July 12, 1994

Date Adopted: July 12, 1994

Date Revised: November 1, 2000; January 31, 2013; November 5, 2014

Applicability: Town of Nantucket Property Owners and Lease Holders.

I. Purpose

To keep the Town-owned rights of ways ("Town Ways") open to the public. Encroachments into Town Ways are primarily significant plantings and landscaping, fences, structures and other improvements placed by property owners to maximize and expand the appearance of their property. As a result of these encroachments in the Town Ways, the safety of drivers and pedestrians may be at risk, the maintenance of these Town-owned right of ways may be prevented or impaired, and the Town may be subject to potential liability from any damage caused by these encroachments in addition to other potential issues caused as a result of the encroachments.

II. Definitions

Encroachment is an unlawful intrusion upon the right or possession of another. In the case of public ways, and sidewalk and bike path easements, the placement of any plantings, structures or other improvements in the boundaries of a public way is deemed to be an encroachment.

Note: G.L. c. 86, s. 3 prevents an abutting landowner from gaining title to a portion of a public way by adverse possession, but only when the boundaries of a public way are known or can be made certain by records or monuments. A property owner cannot claim property rights by adverse possession against a municipality. Adverse possession is the open, continuous and notorious possession of property for a period of twenty years.

III. Policy

It is the policy of the Town of Nantucket to have the property owner or the leasehold property owner, if applicable, and where possible, who placed the encroachments into the Town Ways to remove said encroachments from the Town Ways, unless authorized by the Board of Selectmen as follows.

Category I

Encroachments on Town Ways causing an immediate public safety hazard as determined by the Department of Public Works, or those blocking a Town Way so as to impede

public access, shall be removed immediately by the Town of Nantucket and the owner will be billed for the work done.

Please note that the Town Code Chapter 127-3 prohibits the placement of "obstructions" in any street, sidewalk bicycle path or "way" as defined without permission of the Board of Selectmen. After being notified by a police officer if the property owner fails to remove or commence the removal of the obstruction within 10 minutes after such notification, then he shall be punished by a fine not to exceed \$200. The obstruction is defined as any "bale, box, trunk, grate, cask barrel, garbage can, package dirt or other debris, gate, post or anything that acts as a barrier, whether portable or permanent".

Also please note that G.L. c. 86, Section 3 provides that the Board of Selectmen or the County Commissioners having authority over the public way in question notify the offending property owner of the encroachment by written notice, and then if the encroachment is not removed by the owner, may then remove it.

Category II

Encroachments on Town Ways that do not cause an immediate threat to public safety shall be removed by the property owner following the notification process identified below.

Category III

Encroachments that have a historical precedent, as determined by the Board of Selectmen, with advice of pertinent town officials, may be permitted to remain. Category III encroachments will be identified on a Town-maintained list and, where appropriate, on land records. The list will be maintained by the Town and noted on the Town GIS system.

IV. Procedure

The following procedures shall be followed for enforcement of this policy.

A complaint may be made directly to the Public Works Department by a member of the public. Additionally, if an encroachment is observed by the Fire Chief, Police Chief, Public Works Director, or their designees and employees, then they shall inform the Public Works Director.

Examples of encroachments:

- Obstructions to sight distances at street and driveway intersections;
- Obstructions that lessen sidewalk width;
- Stones, posts or any obstruction, placed on the edge of the pavement or shoulder of the way to prevent parking;
- Drain pipes not installed by the Town which discharge into the road portion of the public way;
- And other such hazards as identified by the Public Works Director or designee(s).

If, after review by the Public Works Director, the encroachment is deemed to be Category I, that is; an immediate threat to public safety, the unsafe condition shall be corrected, or made safe immediately, by the Public Works Department.

If after review by the Public Works Director, the encroachment is deemed not to be an immediate threat, that is a Category II, then the property owner or leaseholder shall be sent a letter, by the Board of Selectmen requiring the encroachment to be removed within 15 days from the certified date of receipt of the letter.

- A letter will be sent by mail informing the property owner or leaseholder of the encroachment. The property owner or leaseholder then has 15 days from receipt of the letter to initiate steps for remediation of the encroachment.
- If the property owner or leaseholder does not initiate steps within 15 days to remove the encroachment, the Public Works Department shall remove the encroachment and may charge costs to the property owner.
- Work that may be done by the DPW or Town subcontractors includes;
 - elimination of overhanging branches and foliage, which may be pruned to the edge of the right of way;
 - removal of stones or other impediments in the right of way;
 - removal of tripping hazards;
 - and removal of other such hazards as identified by the Public Works Director.

V. Public Works Review Process

Reviews may include reference to the Town GIS map, the Google World Map, and to plans and permits on file at the Building Department, Nantucket Registry of Deeds, Board of Health, and the Historic District Commission.

In certain cases the Public Works Director, may decide that the right of way needs to be surveyed to determine the extent of the encroachment. In the first instance, the level of precision for such a survey shall be a minimum of plus or minus one foot. The Director may subsequently decide that a more accurate survey may be required.

The property owner shall pay for the survey if an encroachment is found. If the owner provides a survey stamped by a Registered Land Surveyor, showing the information needed, it shall be accepted for review by the DPW Director.

VI. Prevention of Encroachment Maintenance Requirements

Hedges abutting public ways shall be trimmed back from the edge of the public way vertically up to a height of 14 feet and shall be clear of the Public Way.

Hedges that extend from a driveway along the right of way shall be no higher than 3 feet for a distance of 20 feet either side of the driveway.

Hedges for properties on corner lots shall be no higher than 3 feet for a distance of 20 feet along each road and there shall be no plantings or landscape elements within that 20 foot radius higher than 3 feet.

Fences along the public way shall be entirely clear of the public way, including the post hole. (As guidance, the face of the fence shall be 0.5 feet clear of the public way.)

The public way shall not be used for a parking area, other than allowed on-street parking.

VII. Permitted Uses

Category III: if the Board of Selectmen determines that certain historical encroachments do not pose a threat to public safety then it may grant an approval to the property owner. A fee shall be set which is a minimum of \$50 for the costs to review the easement application. In addition, a usage fee of \$10 per square foot of encroachment area shall be paid. These approvals shall be noted on the Town GIS Map.

Curb cuts to enter permitted parking areas shall be allowed, along with paving as required by the DPW.



DEPARTMENT OF PUBLIC WORKS
BRUSH CUTTING & MOWING GUIDELINES
As of INSERT DATE

General Program:

The main brush-cutting season is between December and April of each year. A minimum of 5 persons work together with a variety of equipment to cut back vegetation encroaching into the edges of publicly traveled surfaces, including bicycle paths and roadways. The bucket truck and operator, 4 persons (2 with chain saws), and the chipper truck encompass one brush cutting crew. Because of the extensive daffodil displays on the primary roads, we begin in December to focus on the primary roads, until spring and daffodil season, when we focus on the secondary roads. Roadside brush cutting is a significant component of bicycle path maintenance.

Scope and Objectives:

Vehicular, bicycle and pedestrian safety are main concerns of the Department of Public Works (DPW). Roadway safety cannot be achieved without a comprehensive roadway maintenance program. DPW employees are responsible for reviewing the Nantucket's public roadways and rights-of-way, identifying hazards and taking corrective action to reduce those hazards.

These Guidelines focus on corrective action necessary to reduce the hazards caused by vegetation. Large trees close to the paved surface can present a fixed object hazard. Grass, weeds, brush and overhanging tree limbs can obscure or limit safe sight line distances. Controlling vegetation helps to reduce the potential for crashes and injuries.

The purpose of these guidelines is to assist DPW maintenance workers in identifying locations where vegetation control is needed to improve safety for the traveling public, as well as to inform the public as to how and when the DPW addresses this type of safety issue.

GOALS OF VEGETATION CONTROL:

The primary goals of vegetation control include:

- Enhancing public safety.
- Keeping signs visible to drivers, pedestrians, cyclists.

- Making bicyclists, pedestrians and other vehicles and users visible to drivers.
- Improving driver visibility of wildlife near the road.
- Helping pedestrians and bicyclists see on-coming traffic.
- Keeping sidewalks, bike paths and roadways clear of low hanging vegetation.
- Preventing vegetative disruption of infrastructure improvements such as drainage, sidewalks and roadway/bike path surfaces.

SPECIFIC CHECKLIST:

Sign Visibility:

- Signs should be clearly visible to drivers at all times.
- Screening or obstructing vegetation should be removed as soon as possible.
- PEDESTRIAN CROSSING, STOP & YIELD signs are most critical and should be cleared immediately.
- The following chart will be used to establish signage sight lines where practical:

Speed Limit (mph)	Traffic Signs (feet)	Directional Signs (feet)
30	250	150
45	350	200

Clear Sight Distance:

- Cut tall grass or brush to define the edge of the road or bike path shoulders.
- Make visible any low fixed objects such as culvert headwalls, drainage inlets and guardrail ends.
- Periodically cut roadway shoulder brush, grass and shrubs to maintain maximum sight distances.
- Keep overhanging/taller vegetation cut to 14 feet or higher above the traveled surface where possible.

Intersection Visibility:

- Where practical, establish a clear vision triangle at each corner of an intersection.
- Private property owners may need to participate in vegetation control at these intersections if private property is involved.
- Cut, trim or clear trees, grass or brush which limit visibility at intersections.