

**MEMO**

**DATE:** July 28, 2020

**SUBJECT:** Update: Guidance for Temporary Non-Highway Use of Right-of-Way

**TO:** District Executives

**FROM:** T Jay Cunningham, P.E., Acting Director  
Bureau of Maintenance and Operations

A handwritten signature in black ink, appearing to read "T Jay Cunningham", followed by a horizontal line extending to the right.

This memorandum replaces the previous guidance that was issued on June 16, 2020 and provides updated guidance on the temporary non-highway use of Department rights-of-way (ROW) to assist municipal recovery during the COVID-19 Pandemic.

To promote consistency and safety, the following guidance shall be used to assist municipalities to plan and implement non-highway uses of state highway facilities. These uses include the creation of additional public areas to support social distancing and compliance with all current and applicable Pennsylvania Orders regarding COVID-19 and all applicable COVID-19 safety mitigation guidance.

For these activities, the Federal Highway Administration (FHWA) will approve short-term fair market value (FMV) lease exemptions on a case-by-case basis. These FMV lease exemptions apply to ROW acquired with federal aid and are available for a 120-day period beginning on May 28, 2020 (ends Sep. 25, 2020). Following approval by PennDOT Central Office, Special Event Permit (SEP) applications for ROW Uses 1 and 2 described below will be submitted to the FHWA for review. This review process will involve the FHWA-PA Division office, the FHWA Office of Real Estate Services (DC), and FHWA Legal Services (DC). The following must be provided for each application:

- Special Event Permit application
- Safety Plan including applicable traffic control plans tailored for the proposed activity. See attached example for reference. Level of detail may vary depending on the proposed activity and complexity of traffic control.
- Programmatic CE Applicability Form (see attached example for reference).

**ROW Use 1: Temporary Full or Partial Closures**

Example – Temporary full or partial closure of travel lanes to accommodate additional public space for tables and seats and/or retail activities.

- Requires Special Event Permit – follow current guidance issued May 21, 2020 by OCC and all current requirements.
  - Municipality must submit application using [form TE-300](#).

- The application must comply with all provisions of Title 67, Chapter 212.701 Subchapter H, Special Events and address the following at a minimum:
  - Describe event, area encompassed, dates/recurrence cycle, closures, and estimated number of participants.
  - Establish detour as necessary.
  - Traffic control must be maintained.
  - Municipality is responsible for all elements of the plan
  - All municipal laws and ordinances apply.
  - Include the following standard condition: *The event will comply with all current and applicable Pennsylvania Orders regarding COVID-19 and all applicable COVID-19 safety mitigation guidance including, but not limited to, guidance from the Pennsylvania Department of Health and the Centers for Disease Control.*
  - Documentation that all indemnification and insurance requirements of the regulation are satisfied.

### **ROW Use 2: Close parking lane for public space/seating**

Example – Temporary use of a parking lane to accommodate additional public space for tables and seats and/or retail activities **on the pavement surface or on temporary raised platforms, commonly referred to as a parklets**. The National Association of City Transportation Officials defines parklets as public seating platforms that convert curbside parking spaces into vibrant community spaces.

- Requires Special Event Permit – follow current guidance issued May 21, 2020 by OCC and all current requirements.
  - Municipality must submit application using [form TE-300](#).
- All requirements listed above for **Temporary Full or Partial Closures** also apply.
- Municipality should enact any necessary parking regulations if elimination of on street parking spaces is proposed. This should be completed prior to issuance of the permit if possible.
  - Document how curbside delivery will be safely accommodated following the loss of parking space(s). If necessary, a new loading zone may be necessary to avoid traffic disruptions.
- Application must include plans of sufficient detail to demonstrate the design requirements are met for the temporary condition.
- Placement and design requirements include the following:
  - May be considered for roadways with speed limits of 25 mph or less.
  - Prohibited in front of active driveways, on street curves or hills where horizontal or vertical sight-distance is an issue.
  - Locate mid-block when possible.
  - Locate 20 feet from a marked crosswalk or 32 feet from the corner at intersections without a marked crosswalk.

- **Street level requirements:**
  - Must use vertical partition to provide positive separation from travel lane (e.g. cones, barrels, gates, bike corrals) spaced a minimum of 10 feet apart. Materials must be approved by the Department.
  - Clearance between curb and travel lane must be a minimum of 7 feet.
  - Tables and seating must be a minimum of 18 inches from the travel lane, creating an 18-inch clear zone.
  - Delineation should be provided through the use of temporary channelizing systems with flexible delineators (such as “quick curb”) and/or pavement markings to further define the designated space.
  - No vertical partition or furniture may protrude into travel lane.
  - Additional Design Considerations – Refer to requirements included in current version of the City of Philadelphia “COVID-19 Commercial Recovery Outdoor Dining Guidelines”:  
<https://www.phila.gov/media/20200611105211/Guidelines-for-Outdoor-Dining.pdf> (current as of July 22, 2020)
- **Parklet requirements:**
  - Wheel stops are required on the leading and trailing ends of the parklet.
  - A parked vehicle or planter must be placed in the leading and trailing parking spots. Where this cannot be provided, lane separator curb delineation (delineators mounted on a temporary plastic curb) shall be placed at the leading edge of the parklet with a taper to the curb stop.
  - Lane separator curb (or surface mounted delineators) should be placed at edge of the travel lane.
  - The outside edge of the parklet closest to traffic must be at least 6 inches in height using a beam of pressure-treated lumber with a cross-section of 6 inch by 6 inch or equivalent.
  - The outside edge of the parklet railing must be 18 inches from the travel lane, creating an 18-inch clear zone.
  - Open guard rails are encouraged to reduce the risk that high winds will shift the parklet. No wall or rail may be higher than 3’, as measured from the street.
  - Construct from or include lightly-colored or reflective materials to aid nighttime visibility.
  - Include vertical elements (e.g., planters, etc.) to ensure visibility to passing vehicles.
  - Include reflective soft hit posts that align with the end of the platform.
  - All street-side corners and other protrusions must be lined with reflective tape.
- Access to all utilities must be maintained, including not blocking drainage flow to stormwater inlets.
- ADA compliance must be maintained.
- Incorporate temporary signing, pavement markings and traffic calming measures such as speed humps where necessary to calm and/or warn traffic.
- Municipality is responsible for all elements of the plan (requests involving private sponsors will generally not be permitted – any such requests would require coordination with Central Office). FHWA has approved the use of parking lanes for public setting consistent with this policy as a categorical exclusion under its NEPA regulations (23 C.F.R. 771.11(c)(1)).
- All municipal laws and ordinances apply.

- Additional Design Considerations – Refer to requirements included in the “City of Philadelphia Parklets Guidelines and Application”:  
([https://philadelphiastreet.com/images/uploads/resource\\_library/City-of-Philadelphia-Parklet-Application.pdf](https://philadelphiastreet.com/images/uploads/resource_library/City-of-Philadelphia-Parklet-Application.pdf)).
- All parklets approved under this policy shall be considered as temporary pilots. The District issuing the permit shall monitor the parklet for any impacts to traffic operations or safety. Findings from the pilot deployments will be considered in the development of a permanent policy.

### **ROW Use 3: Pedestrians shifted to parking lane**

Example – Temporary use of a parking lane to accommodate pedestrian traffic when sidewalk is used for public space for tables and seats.

- Requires municipality to prepare and submit a Temporary Traffic Control (TTC) plan detailing the proposed changes to pedestrian access.
  - Reference Publication 213.
  - ADA compliance must be maintained.
  - Access to all utilities must be maintained, including not blocking drainage flow to stormwater inlets.
- Establish a set timeframe for the temporary plan.
- Advisory Speed Limit signs may be used to slow traffic through temporary restrictions.
- Refer to PennDOT’s Traffic Calming Handbook for strategies to incorporate into designs as necessary.
- Municipality is responsible to set up and maintain all elements of the TTC plan.
- PennDOT approval will be issued via letter from the District Traffic Engineer approving the TTC plan.

Any proposals beyond the categories described in this guidance should be reported to the Bureau of Maintenance and Operations for review.

Should you have any questions or require additional information, please contact Robert J. Pento, P.E., Chief, Traffic Engineering and Permits Section, at 717.783.6265.

Attachment

4940/RJP

cc: Federal Highway Administration  
Assistant District Executives-Maintenance  
Maintenance Services Executives  
District Permit Managers  
District Traffic Engineers  
PennDOT Area Command  
Jason D. Sharp, Chief Counsel, PennDOT  
Steven Roth, Senior Counsel, PennDOT  
Melissa Batula, P.E., Deputy Secretary for Highway Administration  
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