



Demand for Alternate Uses of PennDOT Right-of-Way

**Transportation Engineering and Safety Conference
December 9, 2022**

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PennDOT – Bureau of Operation



➤ Agenda

- Background
- Growing Demand
- Resources and Related Activities
- TAC Study: Demand for Alternate Uses of PennDOT Right-of-Way

➤ Background

- The primary purpose of highway right-of-way (ROW) is for transportation purposes, but there are occasions when the ROW may be used alternatively as economic generators and to enhance quality of life
 - Outdoor dining
 - Parades
 - Festivals
 - Races



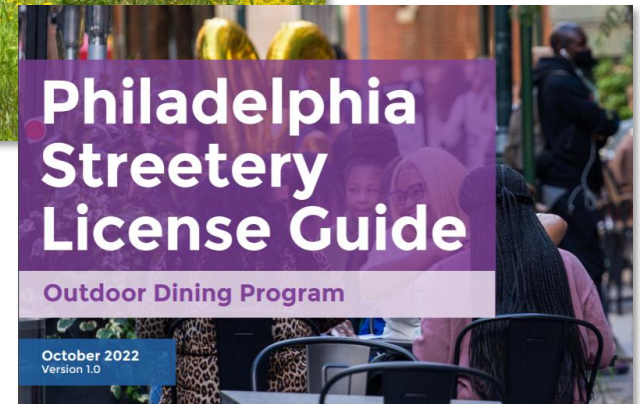
Statutes and Regulations - Federal

- 23 U.S. Code §1.23
 - (B) Except as provided for in paragraph (C)..all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes.
 - (C) ...use of right-of-way... for nonhighway purpose... within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.
- 23 U.S. Code §156
 - A State shall charge a fair market value for the sale, use, lease or lease renewal of property acquired with Federal assistance made available from the Highway Trust Fund.
 - U.S. Secretary of Transportation may grant exceptions

➤ Statutes and Regulations - Pennsylvania

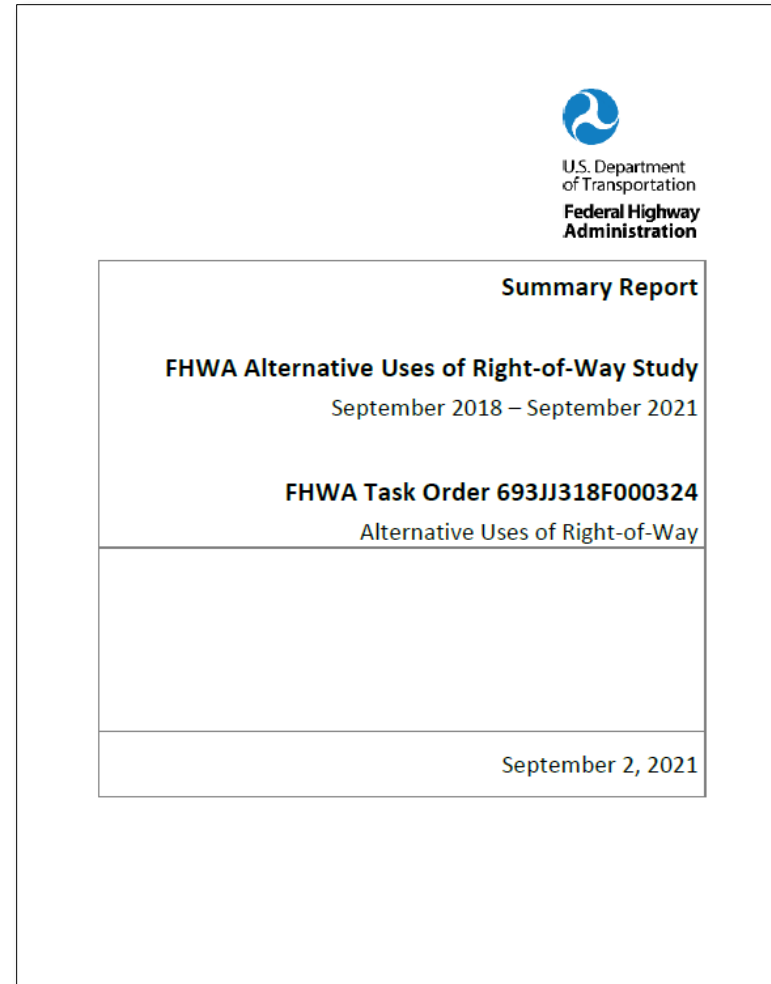
- 75 PA C.S. §6109(j)
 - **Permits for processions, special activities and assemblages on State-designated highways.**
 - Updated through Act 36 in 2021
 - **If the event sponsor is not the local authority**, the local authority is **not required** to submit a statement that the local authority will agree **to fully indemnify, save harmless and defend the Commonwealth**
- 67 PA Code §212.701(b)
 - The Department may issue a permit for a procession, assemblage or special activity on a State-designated highway if a statement that **the municipality will agree to fully indemnify, save harmless and, if requested, defend the Commonwealth.**

➤ Growing Demand and Multiple Uses



➤ FHWA Alternative Uses of ROW Study

- "...this research investigates the state of the practice in accommodating renewable energy technologies and alternative fuel facilities within highway right-of-way (ROW), both activities that might help curb climate change."
- https://www.fhwa.dot.gov/real_estate/publications/alternative_uses_of_highway_right-of-way/



➤ Related Activities

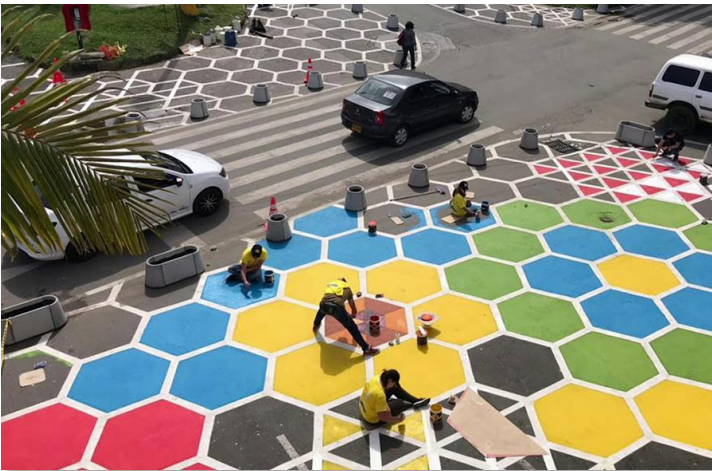
- AASHTO Joint Subcommittee on Alternative and Innovative Uses of the Right of Way (AIROW)
 - Commercial activities such as restaurant seating or retail
 - Community public spaces and pedestrian malls
 - Broadband telecommunications
 - Solar/renewable energy generation
 - Electric Vehicle Charging
 - Truck parking
 - Agricultural use (pollinator programs)
 - Stormwater Management and Carbon Sequestration



➤ Related Activities



- PennDOT Research: Tactical Urbanism and Demonstration Projects
 - Short-term/low-cost projects that promote active transportation and community involvement in urban/suburban settings
 - DVRPC's Expo: Experimental Pop-ups program
<https://www.dvrpc.org/expo>
 - Objective: Research and create a Tactical Urbanism/Demonstration Projects Guide for municipalities



➤ Transportation Advisory Committee Study



PENNSYLVANIA STATE
TRANSPORTATION ADVISORY COMMITTEE

DEMAND FOR ALTERNATE USES OF
PENNDOT RIGHT-OF-WAY

WHITE PAPER



August 2022

<https://www.talkpatransportation.com/perch/resources/documents/alternate-use-rowfinal-white-paper-8-17-22.pdf>

The study examines the issues and challenges Pennsylvania municipalities have encountered in seeking permission for alternate uses of state-owned right-of-way

Project Background

- During the COVID-19 pandemic, public officials had the challenge of balancing:
 - Needs of the local economy
 - Transportation needs for all modes
 - Road safety needs
 - Public health requirements



*Outdoor Dining in West Chester
Source: ABC, Inc., WPVI-TV Philadelphia*

Special Event Permit Process

OS-600 (12-15)



MEMO

DATE: June 16, 2020

SUBJECT: 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

The purpose of this memorandum is to provide guidance on the temporary non-highway use of department rights-of-way 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.

Temporary Full or Partial Closures

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


- 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.

- “Guidance for Temporary Non-Highway Use of Right-of-Way” memorandum
- Three categories of uses to support social distancing:
 1. Temporary full or partial closures of travel lanes
 2. Close parking lane for public space/seating
 3. Pedestrians shifted to parking lane

▶ Special Event Permit Process

- Used to authorize temporary use of ROW
- Special Event Permit Guidance document
 - Directs readers to 67 PA Code §212.701 as the regulations which establish the minimum criteria for special events.
- Event sponsors must complete an application (Form TE-300)

TE-300 (5-19)



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SPECIAL EVENT PERMIT

Processions, Assemblages and Special Activities, and Film Shoots

APPLICANT CONTACT INFORMATION

Contact Name:	Title:		
Organization:	<input type="checkbox"/> Municipal Sponsor <input type="checkbox"/> Private		
Sponsor Street Address:	City:	State:	Zip Code:
Phone:	E-mail:	Hours:	

SPECIAL EVENT INFORMATION

1. Special Event Name: _____
2. Special Event Type (Check all that apply): ☐ Procession ☐ Assemblage ☐ Special ☐ Activity ☐ Film Shoot
3. Special Event Purpose/Description (Attach additional sheet if necessary):

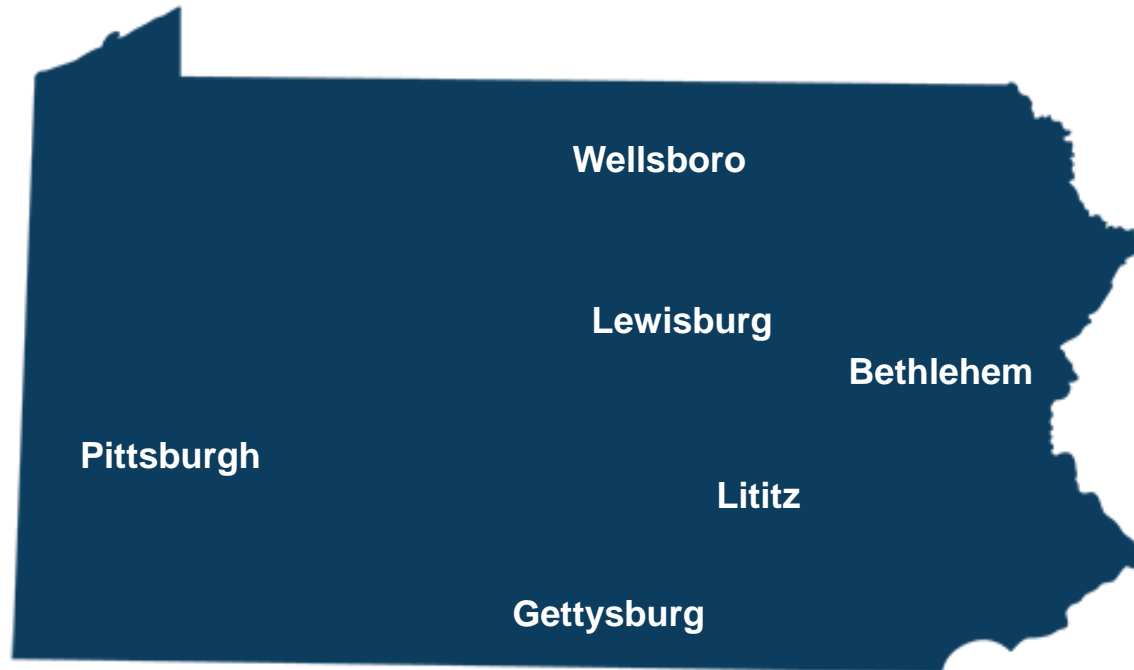
4. Date of Special Event: From _____ To _____
 a. Alternate Date of Special Event: From _____ To _____
5. Time of Special Event: From _____ To _____
 a. Alternate Time of Special Event: From _____ To _____
6. County(ies):

7. Municipality(ies):

8. State Road(s) (List all state roads involved in the special event - Attach additional sheet if necessary):

State Route Number:	State Road Name:	Number of Lanes:	Type of Highway:
_____	_____	_____	Select One
_____	_____	_____	Select One
_____	_____	_____	Select One
_____	_____	_____	Select One

➤ Municipality Case Studies



➤ Municipality Case Studies – Key Themes

- Inexperienced event sponsors do not realize the cost and effort to hold special events
- Special event application can be overwhelming
 - In many cases municipal staff take time to help
 - Many sponsors and municipalities do not have the expertise to develop a new detour route and signing plan
- Fairly easy process when detours are already established
- Concerns with insurance costs
- Support across all municipal departments

Findings and Recommendations

- 22 recommendations grouped into three categories:
 - Recommendations for PennDOT
 - Recommendations for Municipalities/Local Organizations
 - Recommendations for Municipal Organizations
 - PA State Association of Boroughs
 - PA State Association of Township Supervisors
 - PA Municipal League
 - PA Association of Councils of Governments

➤ Recommendations – PennDOT

- Explore the feasibility of authorizing Maintenance offices to coordinate with municipalities to **use County Maintenance signs, changeable message signs, and other traffic control devices.**

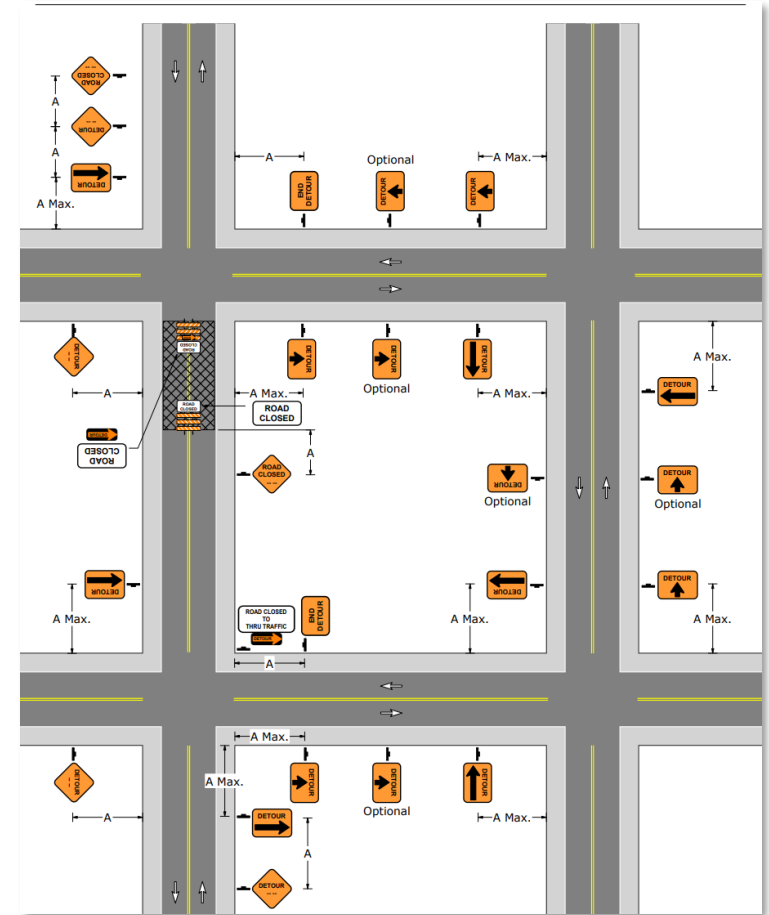


➤ Recommendations – PennDOT

- For third parties requesting the use of state-owned right-of-way for non-transportation commercial activities, **determine if entering into a lease between the third party and PennDOT would be more appropriate than completing the special event permit process.**
- Finalize the **policy for charging and collecting the fair market value fee** in accordance with 23 U.S. Code §156.

➤ Recommendations – PennDOT

- Develop a **training course through LTAP** to provide instruction on **traffic detours**.



PA Typical Application 116-A from PennDOT
Publication 213: Temporary Traffic Control
Guidelines

- Clarify and simplify the Special Event Permit Guidance document and Special Event Permit Application (TE-300).
 - PennDOT is currently updating the policy and permit application form.



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➤ Recommendations – PennDOT

- Update and develop additional resources, guidance, and instructions on the PennDOT website.
- For example, a “Frequently Asked Questions” section could be added to answer common questions, such as:
 - Is it necessary to have a Professional Engineer prepare the detour plan for my event?
 - Are there requirements for temporary signs that are used to detour traffic?
 - What happens if I do not obtain a permit for a special event on state-owned right-of-way?

➤ Recommendations – PennDOT

- Evaluate if the “Guidance for Temporary Non-Highway Use of Right-of-Way” memorandum should be further developed into a formal PennDOT policy document.
- Update 67 PA Code §212.701 and PennDOT Publication 212 (Official Traffic Control Devices) to coincide with 75 PA C.S. §6109(j).
 - **Align with Vehicle Code changes via Act 36 in 2021**

➤ Recommendations - Municipalities

- Hold on local roads rather than state routes.
- For closures on state routes, keep plan the same for all similar future special events.
- Investigate risk sharing pools and national organizations for insurance policies.
- Notify the PA Motor Truck Association to help divert commercial vehicle traffic.

➤ Recommendations – Municipal Organizations

- Create a central resource to pool and share resources, such as detour signage.
- Create a database of information to help with the special events process.
- Request LTAP investigate the possibility of an online tool to assist with special event permit application.
 - **Mapping tool to assist with detours**

Contact Information

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