

CHAPTER 16

RIGHT OF WAY MAINTENANCE

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16.01 PURPOSE. An Ordinance to clarify jurisdiction and control of maintenance activities in Dallas County secondary road rights-of-way and to establish a policy, procedure and penalty for their unauthorized use.

16.02 ADMINISTRATION. This Ordinance shall be administered by the Dallas County Road Department acting under the authority of the Dallas County Board of Supervisors.

16.03 INTERPRETATION. The provisions of this Ordinance shall be interpreted to be the minimum requirements and shall be liberally translated in favor of Dallas County, Iowa, and shall not be deemed a limitation of the power granted by the State of Iowa statutes.

16.04 DEFINITIONS. For use in this ordinance, certain terms or words used herein shall be interpreted or defined as follows:

1. "County" shall mean Dallas County, Iowa
2. "State" shall mean the State of Iowa
3. "Engineer" shall mean the Dallas County Engineer
4. "Department" shall mean the Dallas County Road Department
5. "Board" shall mean the Dallas County Board of Supervisors
6. "Obstruction" shall mean any encroachment, excavation, maintained or abandoned materials, trees and other vegetation, fences or objects which by its presence or continuation presents an impediment to normal maintenance or creates a condition hazardous to safe travel on any roadway within the County.

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7. "Encroachment" shall mean any act, construction, maintenance, planting or extension of unapproved materials from adjoining private properties which enter upon public right-of-way. Such materials shall be considered an obstruction of the

right-of-way and subject to jurisdiction under the appropriate sections of this ordinance.

8. "Imminent hazard" shall mean those obstructions within the right-of-way which present an immediate danger to the safe passage of vehicles or which cause a condition in which physical injury or reduced visibility to travelers is likely to occur due to the presence of said hazard.

9. "Unauthorized use" shall include any use of the right-of-way where an approved permit has not been issued by the Department.

10. "Right-of-Way" or "Public Road Right-of-Way" shall mean the area of land, the right to possession of which is secured or reserved by a governmental subdivision for roadway purposes (1997 Code of Iowa Sec. 306.3{9}).

11. "Secondary Roads" or "secondary road system" shall mean those roads, outside the boundaries of municipalities, classified as trunk, trunk collector and area service under section 306.1 (1997 Code of Iowa Sec. 306.3{11}).

12. "Road" or "Street" shall mean the entire width between property lines through private property or designated width through public property of every way or place of whatever nature when any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic (1997 Code of Iowa Sec. 306.3{10}).

16.05 POWERS AND DUTIES OF THE COUNTY. The following shall be considered pertinent to this Ordinance:

1. General Powers and Limitations
1997 Code of Iowa Sections 331.301-1; 331.301-2; 331.301-3; 331.301-6
County home rule implementation-General powers and limitations.
2. Jurisdiction
1997 Code of Iowa Section 306.4
"The jurisdiction and control over the roads and streets of the state are vested as follows:
...Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties."

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3. Taxable Property
1997 Code of Iowa Section 427.2
"Real estate occupied as a public road, and rights-of-way for established public levees and rights of way for established, open, public drainage improvements shall not be taxed."
4. Obstructions in Rights-of-Way

1997 Code of Iowa Section 319.13
Obstructions in highways - Right and duty to remove

5. Program of Control

1997 Code of Iowa Section 317.13

"The county board of supervisors shall allow only that burning, mowing, or spraying of roadsides by private individuals that is consistent with the adopted integrated roadside vegetation management plan."

6. Integrated Roadside Vegetation Management

1997 Code of Iowa Section 314.22

"Objectives. It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa's roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes."

16.06 MAINTENANCE POLICY FOR SECONDARY ROAD SYSTEM WITHIN THE COUNTY.

1. It shall be the responsibility of the Engineer to economically, efficiently and with a good faith effort, direct and supervise all maintenance and construction work within the road system of Dallas County.

2. The Engineer shall have the authority to order the removal of any and all obstructions within the public rights-of-way and to clean, reshape or reform any section of the right-of-way deemed necessary to comply with State of Iowa Engineering Standards. At the discretion of the Engineer, any and all appropriate actions necessary to assure safe travel conditions within the secondary roads system will be implemented including but not limited to maintenance of acceptable distances for clear visibility, construction or repair of appropriate structures and appropriate designation of hazardous conditions through placement of warning signs.

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3. Provision within the jurisdiction of the County Engineer's Office shall be made to implement a permit system to allow private party and public utility

construction or usage of portions of the right-of-way for specified purposes.

4. It shall be at purpose with this Ordinance for any and all proposed projects or other usage of the right-of-way not approved by the Engineer to constitute a violation of the intent of this Ordinance.

16.07 PERMIT REQUIRED FOR ACTIVITIES WITHIN THE COUNTY RIGHT-OF-WAY.

1. Code of Iowa Section 319.14 provides for the issuance of permits within the right-of-way as follows:

"A person shall not excavate, fill, or make a physical change within the right-of-way of a public road or highway without obtaining a permit from the highway authority having jurisdiction of the public road or highway. Work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the excavation, fill, or physical change within the right-of-way of a public road or highway does not conform to the specifications that accompany the permit, the person shall be notified to make such conforming changes. If after twenty days the changes have not been made, the public road or highway authority may make the necessary changes and immediately send a statement of the cost to the responsible person. If within thirty days after sending the statement the cost is not paid, the highway authority may institute proceedings in the district court to collect the cost of correction. Except as provided in Section 306A.3, utility companies are exempted from the provisions of this section."

2. Permit required for work within the right-of-way.

- a. It shall be the policy of this Ordinance to require issuance of a standardized permit for any and all private party or utility work to be done within the right-of-way of the Dallas County Secondary Roads system.
- b. The conditions and requirements set forth in the format of such permit shall be binding and violation of the terms put forth in the permit shall constitute grounds for denial of permission to continue a project

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at any time deemed appropriate by the County Engineer's Office.

- c. It shall be the responsibility of the permittee to accept and abide by all regulations put forth in the permit issued and it shall further be the responsibility of the permittee to correct or absorb costs for correction of any irregularities found upon review of the permitted project by the County Engineer's Office.
3. Issuance of permits to work within the right-of-way in Dallas County.
- a. By definition, the right-of-way within the County Secondary Roads System is public property and the maintenance of this land is required to meet standards set by the Engineer to assure safe, manageable conditions for travel within the system. Any and all non-maintenance activities directed by the Engineer shall be considered private party action and as such

shall require issuance and possession of a valid permit before such work can be undertaken.

b. Private party and utility projects within the County right-of-way requiring issuance of a permit shall include but not be limited to the following:

- 1) Utility construction or replacement of existing utility service lines, including any project resulting in regrading, removal of existing groundcovers, addition of service entrances or use of vehicular equipment within the right-of-way.
- 2) Construction or relocation of access entrances to private properties.
- 3) Alteration of drainage patterns established in original construction of a roadway including placement, removal or blocking of a culvert and construction of barriers to the flow of run-off waters.
- 4) Regrading of backslopes adjoining properties, including outlets for drainage tiles or construction of erosion control structures that alter existing drainage capacity of sections of the right-of-way.

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- 5) Use of right-of-way areas for storage of equipment or materials, including agricultural products for prolonged periods of time.
 - 6) Planting or maintenance of vegetation within the right-of-way that does not meet standards set forth in the Dallas County Integrated Roadside Vegetation Management Plan.
 - 7) Any other activity within the right-of-way which causes a temporary interference or complication to normal maintenance activities or causes interference with public safety.
- C. Acts and uses of the right-of-way for which permits will not be issued shall include but not be limited to the following:

- 1) Placing of trash, garbage, branches, wood, grass, rock, stone, weeds, litter or refuse of any kind within any right-of-way; abandonment of any kind of materials within any right-of-way.
- 2) Planting or maintenance of any vegetation that interferes with the maintenance of roadways or in any way interferes with the visibility or safety of the public.

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- 3) Encroachment of agricultural or landscape vegetation into the right-of-way. Such encroachment shall be considered a violation of this ordinance and shall be removed as deemed necessary by the Department as part of normal maintenance activities.
 - 4) Excessive or inappropriate mowing, cropping, spraying, burning or destruction of approved seedings established by the County and including those sites seeded to native grasses and wildflowers.
 - 5) Excessive or inappropriate mowing, cropping, spraying, burning or destruction of naturally occurring prairie remnants and remnant species.
 - 6) Placement of permanent or electric fences within the right-of-way.
 - 7) Excessive or erosive drainage of waters from private properties, which results in, protracted damage to road surfaces, designed channels or desirable vegetation.
 - 8) Construction of structures or buildings within the right-of-way.
 - 9) Other materials, construction or developments which cause imminent or prolonged hazard or which interfere with normal maintenance activities.
 - 10) Use of right-of-way by recreational vehicles.
 - 11) Digging or removal of wildflower plants from the right-of-way.
4. Permit applications granted.
- a. Applications for issuance of a permit to work within the County right-of-way will be made through the Department. All applicants will be required to fill out a form describing the location of the proposed activity, type of project and other criteria as dictated by the Engineer.
 - b. All applications will be reviewed and approval will be granted if applications:
 - 1) Conform to objectives stated in the Dallas County Integrated Roadside Vegetation Management plan and/or
 - 2) Are deemed necessary by the Engineer applying Federal, State and local laws and regulations and

meet acceptable standards for the type of project requested.

Granting of permits shall be at the discretion of the Engineer

- c. No project shall be undertaken until receipt of an approved permit from the Department. Actions taken prior to approval and actions taken without a permit shall be considered a violation of this Ordinance and shall be subject to penalty or revocation of privilege to act.
- d. Upon request of any employee of the Dallas County Sheriff's Office or Dallas County Road Department, permittees on site shall present the approved permit or a copy thereof.

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16.08 NOTICE TO CEASE.

Contractors, landowners and others found to be in violation of permit standards, acting prior to issuance of a permit, or acting without a permit shall be notified of said violation and given an opportunity to cease the offending act.

If the action does not cease within the time frame specified in the initial warning, the county shall provide a written Notice to Cease sent by certified mail or served by the Sheriff, Engineer or their authorized representatives.

16.09 CORRECTION AND REMOVAL.

1. The County shall allow 20 days from the date of receipt of the Notice to Cease for unauthorized use of the roadside right-of-way to be corrected. Objects shall be removed or repairs made in a suitable manner as to not cause damage to the right-of-way. Repairs to the right-of-way shall be done in a manner that restores the right-of-way to its original condition prior to the unauthorized use.
2. If after 20 days from the date of receipt of the Notice to Cease the violation has not been fully corrected, the County will remove obstructions, materials, or correct any damage. Such action taken by the County will be assessed as real cost and be assigned to the violator in a sum not to exceed the actual cost of correction.
3. When the violation of permit standards is determined to be an imminent hazard to the public safety, the Engineer or his representative may proceed to have it abated or corrected immediately. Such action taken by the County will be assessed as real cost and be assigned to the

violator in a sum not to exceed the actual cost of correction.

4. Special Provisions - Excessive Soil Loss
If excessive soil erosion and deposition from private properties are causing protracted damage to road surfaces, designed channels and/or desirable vegetation a Notice to Cease shall be sent to the offending party as outlined above. This notice shall also inform the landowner and/or operator to contact the Engineer regarding his/her opinion as to what action should be taken to address the problem. If the landowner/operator does not contact the Engineer

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within the designated 20-day period, or if contact is made and adequate remedies are not agreed upon, then a Soil Loss Complaint may be filed by the Department with the Dallas Soil and Water Conservation District Commission.

- a. After a complaint is received by the Dallas Soil and Water Conservation District Commission, notice of the same shall be mailed to the party upon whom the complaint is filed. A hearing shall be held within thirty (30) days of the date of the complaint, and the party upon whom the complaint is filed shall receive notice of said meeting and shall be allowed its right to due process at said meeting.

Upon a hearing on the matter, if the Dallas Soil and Water Conservation District Commission determines that excessive soil loss is occurring and is adversely impacting the County right-of-way, the following process shall be followed:

- 1) The parties shall make an effort to work out the problem through a voluntary solution, with the solution set forth in writing.
- 2) If a voluntary agreement cannot be reached by the parties, the procedures outlined in Iowa Code Section 467A for the resolution of the soil loss complaint shall be followed.

16.10 PENALTY.

Violation of any provision of this ordinance shall be a Simple Misdemeanor and upon conviction, violators shall be fined not more than one hundred dollars (\$100) or imprisoned for not more than thirty (30) days for each offense.

16.11 ABROGATION, GREATER RESTRICTION, SEVERABILITY AND REPEAL.

1. Abrogation and Greater Restriction
This Ordinance is not intended to repeal, annul, abrogate, impair or interfere with any existing covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to the law.

However, wherever this Ordinance imposes greater restrictions the provisions of this Ordinance shall govern.

2. Severability

Each section, paragraph, sentence, clause, word and provision of this Ordinance is severable and if any portion
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is deemed unconstitutional or invalid for any reason, such decision shall not affect the remainder of the Ordinance nor any part thereof other than the portion affected by such a decision.

3. Repeal

All other ordinances or parts of ordinances of Dallas County, Iowa, inconsistent or conflicting with this Ordinance to the extent of the inconsistency only, are hereby repealed.

16.12 EFFECTIVE DATE.

The effective date of this ordinance shall be 1 May, 1999.

Passed and adopted this 27th day of April, 1999, by the Dallas County Board of Supervisors.