

In the Matter of Correcting	)	Notice Correcting Scrivener's Error
Scrivener's Error	)	to Correct Allocation Information
	)	
	)	Ordinance No. 22-03
	)	

Certificate of Re-filing (Book of Record)

CJ 2022-222

Below signed Curry County Legal Counsel, pursuant to Curry County Ordinance No. 17-05, hereby provides notice of correction of scrivener's error, to wit:

\_\_\_\_\_ Erroneous order/resolution number:

\_\_\_\_\_ Erroneous exhibit: \_\_\_\_\_

XX Other: Original Ordinance omitted the attachment containing amendments to the County Code. The complete and correct attachment is provided herein.

The prior Ordinance No. 22-03, bearing a filing date of August 31, 2022, accompanies this notice.

**RE-FILED AT THE REQUEST OF CURRY COUNTY LEGAL COUNSEL TO CORRECT ORDINANCE No. 22-03 PREVIOUSLY RECORDED AS DOCUMENT NUMBER CJ 2022-222**

Dated this 21 day of September, 2022.

  
 \_\_\_\_\_  
 Anthony Pope, OSB No. 192939  
 Curry County Legal Counsel

IN THE BOARD OF COUNTY COMMISSIONERS  
IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of an Ordinance Amending )  
Article Three, Division Four of Curry )     ORDINANCE NO. 22-03  
County Code )

The Curry County Board of Commissioners ordains as follows:

**SECTION 1: TITLE**

This Ordinance shall be known as Ordinance 22-03, an Ordinance amending the Curry County Code with respect to Article Three, Division Four – Use of Road Rights-of-Way.

**SECTION 2: ADOPTION**

The revised Article Three, Division Four, attached hereto and incorporated by reference amends and in its entirety replaces the current Article Three, Division Four of the Curry County Code. (Use of Road Rights-of-Way)

**SECTION 3: SEVERANCE CLAUSE**

If any section, subsection, provision, clause or paragraph of this Ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not affect the validity of the remaining portions of the Ordinance; and it is hereby expressly declared that every other section, subsection, provision clause or paragraph of this Ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

**SECTION 4: EMERGENCY CLAUSE**

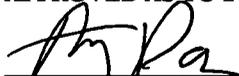
The Board of Commissioners for the County of Curry deems this Ordinance necessary for the immediate preservation and protection of the public, peace, health, safety and general welfare for Curry County and declares an emergency exists, and this Ordinance shall be in full force and effect on its passage.

**SECTION 5: SEVERABILITY**

If any portion of this Ordinance is for any reason held invalid by and court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent portion, and such holdings shall not affect the validity of the remaining portion of this Ordinance.

DATED this 20<sup>th</sup> day of July, 2022.

APPROVED AS TO FORM:



Anthony Vope, OSB #192939  
Curry County Counsel

FIRST READING: JULY 20, 2022

EFFECTIVE DATE: JULY 20, 2022

EMERGENCY ADOPTION: YES

**BOARD OF CURRY COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
John Herzog, Chair

\_\_\_\_\_  
Christopher S. Paasch, Vice Chair

  
\_\_\_\_\_  
Court Boice, Commissioner 8/17/22

## **ARTICLE THREE – ROADS**

### **DIVISION FOUR USE OF ROAD RIGHTS-OF-WAY**

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#### **SECTION 3.04.010 AUTHORITY**

This division is being adopted by the Curry County Board of Commissioners under the authority of ORS 374.309 and ORS 819.140.

#### **SECTION 3.04.020 DEFINITIONS**

- 1) “Erect” means to construct, build, assemble, place, affix, attach, create, paint, draw, or in any way bring into being established.
- 2) “Clear Zone” means, as defined by the Federal Highway Administration, an unobstructed, traversable roadside area that allows a driver to stop safely, or regain control of a vehicle that has left the roadway.
- 3) “Disabled Vehicle” means a vehicle which does not reasonably appear to be currently capable of being legally operated on a public road due to the condition of the vehicle or mechanical issues, including but not limited to missing major components such as an engine, transmission, windshield or wheels, flat tires, or other obvious damage or mechanical issues which reasonably leads a deputy to believe that the vehicle is inoperable.
- 4) “Hazard or Obstruction” means a vehicle or any structure standing in such a manner as to jeopardize public safety and the efficient movement of pedestrian or motor vehicle traffic including but not limited to those situations described in ORS 819.120.
- 5) “Recreational Vehicle” means a vehicle with or without motive power that is designed for human occupancy and to be used temporarily for recreational, seasonal, or emergency purposes; and as further defined by ORS 801.409 and ORS 197.492 or any such state law as may be amended.
- 6) “Towing” means the taking possession of a vehicle and removing it to a storage facility at the request of law enforcement personnel.

#### **SECTION 3.04.030 WORK IN RIGHTS-OF-WAY; PERMIT REQUIRED; CONDITIONS; EQUITABLE REMEDY**

- 1) Except as otherwise provided in this division, no person shall place, build, construct, extend, enlarge or otherwise work on any facility, thing or appurtenance in the right-of-way of a County Road without first obtaining a permit from the County Roadmaster. This requirement applies to all work, including but not limited to the following:
  - a. Constructing, grading, surfacing or providing drainage facilities under the access to a private driveway or approach road;
  - b. Pipelines, irrigation lines, sewer lines, underground cables, overhead wires and utility poles;
  - c. Signs, billboards, symbols, notices, advertisements or directional guides;

- d. Sidewalks, curbs, gutters, retaining walls, meters, inlet basins, fences and ornamental objects;
  - e. Planting of trees or other vegetation; and
  - f. Mailboxes and supports other than those conforming to design standards provided by the Road Department.
- 2) No person shall construct or maintain any facility, thing, or appurtenance within any such right-of-way in violation of any of the conditions of a permit or any of the provisions of this division.
  - 3) No person shall use, occupy or maintain any facility or thing placed wholly or partly within the road right-of-way in violation of, or without first obtaining the permits required by, any law in effect at the time such thing or facility is so placed.
  - 4) Nothing in this section shall be construed to prevent the County from removing anything from a County road right-of-way, whether or not the same is installed under a permit or in compliance with this division, where the County Board of Commissioners finds that such removal has become necessary to the public's use or improvement of the road.

**SECTION 3.04.040      EXCEPTIONS TO CERTAIN REQUIREMENTS;  
INTERPRETATION**

- 1) A permit is not required for the following, providing the work does not involve excavation:
  - a. Performing maintenance or minor improvement to existing facilities lawfully in place;
  - b. Utilizing lawfully installed facilities as intended when installed, including the following:
    - i. Inspection and cleaning of sewer and storm water facilities;
    - ii. Inserting cables in existing conduits or making service connections within a terminal structure; and
    - iii. Utilization that is expressly acknowledged by prior permit provisions; and
  - c. Other miscellaneous minor activities as specifically approved in writing by the Roadmaster.
- 2) Nothing in this section shall:
  - a. Limit or affect any of the powers granted to, or duties imposed upon, the County Board of Commissioners, the Department of Transportation, or the Public Utility Commissioner by ORS 758.010 and 758.020, or any rights granted or authorized under those statutes or any other statutes pertaining to powers, duties and rights of the aforesaid;
  - b. Grant and right for the construction or placing of an approach road, structure, pipeline, ditch, cable, wire or other facility, thing or appurtenance on the right-of-way of any County road; or

- c. Be deemed to affect any approach road, structure, pipeline, ditch, cable, wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right-of-way of any County road prior to September 13, 1967, subject, however, to the authority reserved to the County Board of Commissioners in Section 3.04.030 (4)

### **SECTION 3.04.060 REVIEW OF PERMIT APPLICATIONS**

From the date this division becomes effective the authority contained in ORS 374.305 through 374.325 relating to County roads applies to any facility, thing or appurtenance within a County road right-of-way. After a completed application with the required fee has been submitted, the Roadmaster, or his or her authorized representative, shall review the application and shall issue the permit if he or she determines that the proposal will comply with the provisions of this division and the applicable requirements imposed by State law. The Roadmaster may impose additional written conditions on a permit consistent with the provisions of this division if he or she finds such conditions to be necessary to the public interest in the safe use of the road and the preservation of the public improvements therein and on the property adjoining the same. The Roadmaster may also require the applicant to submit plans which, when approved, will become part of the conditions of the permit. The Roadmaster shall prepare appropriate forms to assist the applicant in providing the information necessary for the application review.

If the applicant disagrees with the Roadmaster's interpretation of the regulations or with the conditions imposed by the Roadmaster, or if the Roadmaster finds that the proposal raises problems of public safety or problems having to do with the public use or protection of the road, which problems are not addressed in the regulations, then either may refer the application to the County Board of Commissioners, which Board shall, within thirty (30) days, afford them an opportunity to be publicly heard and make its final decision in the matter. If the Board finds that the proposal creates a problem to public interest in the road which cannot be solved by the application of the regulations or adequate conditions, the Board shall deny the application.

The Roadmaster shall arrange for whatever field study and inspection he or she deems to be appropriate to assure compliance with the requirements.

### **SECTION 3.04.070 PERMIT REGULATIONS AND CLASSIFICATION**

- 1) The regulations pertaining to each of the various permits issued by the Roadmaster, which are set forth in Exhibit D, "PERMIT REGULATIONS & CLASSIFICATION" following the text of this division, are hereby adopted and made a part of this division.
- 2) A permit fee shall be paid at the time the application for a permit is submitted to the Roadmaster. All permits issued by the Roadmaster shall be classified under one of the following headings on a general "Facility Permit" form:
  - a. Driveway/road approach permit;
  - b. Road encroachment permit;

- c. Road improvement permit;
  - d. Special permit;
  - e. Utility permit;
- 3) Copies of the regulations appropriate to the classification, as determined by the Roadmaster, shall be attached to, or referenced on, each permit issued.

#### **SECTION 3.04.080 PERMIT FEES**

Fees for the various permits required by this division shall be set by Board resolution.

#### **SECTION 3.04.090 EXEMPTIONS FROM FEE REQUIREMENT**

No fee shall be required for a permit in the following circumstances:

- 1) Where installation of public facilities by public or quasi-public entities is involved;
- 2) Where the Roadmaster finds that the organization which proposes the installation is engaged in a nonprofit activity and that the activity is for the benefit of the general public;
- 3) Where the permitted facility, thing or appurtenance in the right-of-way of the County road is in lawful existence as of the effective date of this division except that this exemption does not apply to work done after such effective date; and
- 4) In any instance where the Roadmaster deems it to be in the best interests of the County to waive the permit fee.

#### **SECTION 3.04.100 ALTERATION OR REMOVAL OF TREES AND VEGETATION IN COUNTY ROAD RIGHTS-OF-WAY**

- 1) All trees within a County right-of-way are subject to the County's control, and no tree may be altered or removed without a permit from the County. The permit requirement does not apply to public utilities exercising their rights within the right-of-way pursuant to State Law of franchise. The authority to issue a permit under this section is delegated to the Roadmaster or his or her authorized representative. In issuing a permit, the County shall have the authority to impose such conditions as it deems necessary for public safety and convenience.
- 2) The County has and claims the right to remove or alter any tree, or remove any other vegetation, situated entirely within the County road right-of-way if, in the judgement of the Roadmaster, such removal is necessary to the use or improvement of the road or related facilities or for public safety.
- 3) If the Roadmaster finds that a tree to be removed may have marketable or ornamental value to the owner of the land abutting the half of the right-of-way on which the tree is situated, the County shall first send notice to the abutting owner, giving the owner thirty days within which to secure a permit and alter or remove the tree or vegetation. If within that period of time the tree or other vegetation is not removed or altered to the extent necessary to the public safety and convenience as found by the Roadmaster, the County may remove or

alter the tree or vegetation, and if it is a merchantable tree, retain it to defray the cost of removal. For purposes of giving notice under this subsection, the owner according to the Assessor's records of the property abutting the half of the right-of-way within which the tree is situated shall be deemed the owner of the underlying tree. Notwithstanding the foregoing, if the Roadmaster or his or her authorized representative determines that an emergency exists which may affect the public safety, no notice shall be required prior to the removal of the tree or vegetation.

- 4) The Roadmaster may define by written policy those criteria by which he or she determines that the removal or alteration of a tree or other vegetation within a County road right-of-way is necessary for public safety or convenience; that a tree is marketable or has ornamental value to abutting property; or that an emergency exists which may affect the public safety. When such written policy is approved by the Board of Commissioners, any determination made by the Roadmaster pursuant to the policy is final.
- 5) Notwithstanding subsection (4) hereof, the Board of Commissioners may, on its own motion, within the said thirty days, review a proposal to remove a tree under this division and may determine, at its discretion, whether there is a public interest which outweighs the public safety issue raised by the presence or condition of the tree, or may determine at its discretion that the public safety and convenience can be adequately served without the removal of the subject tree considering its value or function.

#### **SECTION 3.04.110 PROHIBITED ACTIVITIES ON COUNTY RIGHTS-OF-WAY**

The following is prohibited in rights-of-way within the unincorporated areas of Curry County:

- 1) Lighting of fires;
- 2) Depositing of putrescible or non-putrescible solid waste, or refuse of any kind except in designated containers;
- 3) Camping, staying overnight, or any activity establishing occupancy or of a residence, whether temporary or permanent; and
- 4) Erection of any temporary or permanent structure, building, or facility, including but not limited to tents, shacks, lean-tos, stands, or shelters within the roadway clear zone in a manner which has the potential of creating a safety hazard;
- 5) Parking unlawfully, including but not limited to:
  - a. Parking of any vehicle without license plates, with expired registration tags, or with an expired temporary licensing permit; and
  - b. Parking of any vehicle in a manner which interferes with the safe flow of traffic or creates a safety hazard, including parking for any extended length of time within the clear zone of any roadway.
  - c. Parking of a recreational vehicle for more than twenty-four hours, except when parked lawfully adjacent to the property of the recreational vehicle's owner, not within thirty feet from any roadway intersection or parking lot entrance, and without any occupants.

- i. Moving a recreational vehicle to a different site within the County shall not constitute the start of a new twenty-four hour period.

**SECTION 3.04.200 VIOLATIONS; REMOVAL OR CORRECTION OF  
INSTALLATIONS; PROSECUTION**

- 1) If any person fails to obtain a permit or to comply with the appropriate regulations or permit conditions, then the Roadmaster may take appropriate action to remove or correct the installation and recover the cost from the person responsible, all in accordance with the authority contained in ORS 374.307 and 374.320 as such statutes relate to County roads. However, such action shall not waive the County's right to prosecute the offender under Section 3.04.990.
- 2) In addition to the remedies set forth in subsection (1) hereof or prescribed by ORS 374.307, 374.320, and 819.100-819.200, violation or failure to comply with provisions of this division may be punishable by citation under appropriate provisions of Article 10 of the Curry County Code, or as otherwise provided by this division. When applicable, a separate offense may be deemed committed each day during or on which such unlawful condition is maintained or continued after citation or notice of violation has been given.
- 3) Certain vehicular parking violations, such as those creating a safety hazard, may be subject to immediate custody and towing as provided by ORS 819.120. The statutory and code requirements under these provisions require notice and explanation of procedures available for obtaining a hearing prior to towing. Any locks installed to prevent towing of a vehicle in violation of this division may be removed for the purpose of towing the vehicle. Any vehicles parked in such a manner as to prevent the towing of a vehicle in violation of this division may be temporarily moved for the purpose of providing access for towing of the vehicle in violation.