

Re-record because passed & adopted date was blank.

ORDINANCE # 046-10

ESTABLISHING GENERAL CRITERIA FOR CONSTRUCTING AND/OR MAINTAINING PUBLIC, NON-COUNTY MAINTAINED ROAD RIGHT-OF-WAY BY PRIVATE PARTIES AND SPECIFYING THE INVOLVEMENT OF COUNTY STAFF

WHEREAS, the laws of the State of Arizona authorize the Board of Supervisors to control and manage public right-of-ways and to regulate the extent and conditions of improvements within such right-of-ways; and

WHEREAS, there are publicly dedicated roads or easements granted to the public for road purposes that are not in the County Maintenance System; and

WHEREAS, the Board of Supervisors desires to have some ability to respond to the public complaints that a private person is constructing or maintaining a road in the public right-of-way in such a manner that may be hazardous, and

WHEREAS, the Board of Supervisors recognizes that some roads have a mixture of public and private rights-of-ways and that the County does not have the resources to survey these types of roads in order to make an absolute determination that the construction or maintenance activity is actually located in that public part of the right-of-way; and

WHEREAS, notice of the public hearing was published in the Official County Newspaper at least 15 days prior to the hearing,

NOW, THEREFORE, BE IT RESOLVED that the following is hereby established:

A. Definitions:

Public, non-maintained road rights-of-way: A width of land that has been dedicated to the public for roadway purposes or an easement that has been granted to the public for roadway purposes but that is not in the County's Road Maintenance System.

B. General Provisions

Constructing or maintaining a public, non-maintained road rights-of-way by a private person shall be done in such a way as to:

1. Not block off access to the public right-of-way.

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- A private livestock fence that exists on the date of this Ordinance that crosses or otherwise encroaches on a right-of-way that is not maintained by the County may continue to exist; provided, however, that if the fence prevents travel on such a right-of-way by a person whose property is accessed by the right-of-way, the person who owns or maintains the fence must install a gate, remove the fence or otherwise ensure access on the right-of-way. No new fences will be allowed in or to cross a right-of-way unless by written consent of the Cochise County Engineer.
2. Not create hazards to the driving public.
 3. Minimize storm water run-off onto private property.
 4. Not create road side shoulders or ditches abutting the travelway that are too steep (typically no greater than about 4:1).

C. Staff Procedures

1. If the County receives a formal written complaint, staff will first research the status of the road right-of-way to determine if it involves a recorded public right-of-way. Staff will not survey the road to determine if the road construction or maintenance activity is actually in the public right-of-way.
2. If it is determined that the right-of-way is public, staff will investigate in a timely manner as determined by the County Engineer. If there appears to be a violation of the provisions of the Ordinance, staff shall attempt to contact the private person doing the construction or maintenance activities and make the person aware of the Ordinance and request the person to remedy the situation.
3. If the situation is not remedied, the County may put up a sign warning the traveling public of a potential hazard. The County Attorney's Office may also be requested to pursue an action to remedy the situation.

D. Effective Date

This Ordinance shall be effective 30 days after its approval by the Cochise County Board of Supervisors.

PASSED AND ADOPTED by the Cochise County Board of Supervisors this 20th day of July, 2010.

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Pat Call, Chairman
Cochise County Board of Supervisors

ATTEST:

Gussie Mottler, Deputy
Katie A. Howard, Clerk
Board of Supervisors

APPROVED AS TO FORM:


Britt W. Hanson,
Chief Civil Deputy County Attorney