

**ORDINANCE NO. 37**

**UNAUTHORIZED USE OF SECONDARY ROAD RIGHT-OF-WAY**

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**17.01 PURPOSE.**

The purpose of this chapter is to discourage the unauthorized use of Clarke County Secondary Road right-of-way.

The unauthorized uses include, but are not limited to the following: the cultivation and growing of crops on the county right-of-way, the improper placing of fences or ditches on the county right-of-way, the alteration of ditches, water breaks, and drainage tiles on the county right-of-way, the placement of trash, junk, rocks, corncobs, brush, abandoned vehicles or machinery, and other items on the county right-of-way, and the placement of billboards, signs, hazardous mailbox supports, and advertising devices on the county right- of-way.

The unauthorized use of secondary road right-of-way can, among other things, undermine attempts to control drainage and flood water, diminish snow storage capacity and hinder snow removal, damage or shorten the life expectancy of the roadway, or create hazardous obstructions in the roadway.

The unauthorized use of secondary road right-of-way therefore endangers the health, safety, and welfare of the citizens of Clarke County.

**17.02 DEFINITIONS.**

1. "County Secondary Roadway Right-of-Way" means the entire width, distance, and portion of any property that the County has the right to use, whether by easement or fee, for roadway purposes. This includes the traveled portion of the roadway, the shoulders and the ditches and embankments, including both fore slopes and back slopes, attached to any county secondary roads that are used for roadway purposes. A width of these properties varies and have been removed from taxation due to their public usage.
  
2. "Unauthorized Use of the County Secondary Roadway Right-of-Way" means any use of the county secondary roadway right-of way that is not pre-authorized in writing by the Clarke County Engineer and that occurs after the effective date of this ordinance. It includes, but is not limited to the following: excavating,

filling, or making any physical changes to any part of the county secondary roadway right-of-way; the cultivation and growing of crops on the county right-of-way, the destruction of plants placed in the county right-of-way, the placing of fences or ditches on the county right-of-way, the placement of trash, junk, rocks, corn cobs, brush, vehicles, machinery, or other items on or in the county right-of-way, and the placement of billboards, signs, hazardous mailbox supports, and advertising devices on the county right-of-way.

3. “Unauthorized Use of the County secondary Roadway Right-of-Way” does not include the mowing or harvesting of grasses in the county right-of-way so long as the mowing or harvesting of grasses does not destroy or adversely affect the grasses or other plants in the county right-of-way or is not in violation of an integrated roadside vegetation management plan promulgated pursuant to Section 314.22(2) of the Code of Iowa.
4. “Unauthorized Use of the County Secondary Roadway Right-of-Way” does not include the actions of the Clarke County Engineer or any agency of Clarke County or the State of Iowa.
5. “Any person(s) responsible” shall include any person who personally does any act, which constitutes the Unauthorized Use of the County Secondary Roadway Right-of-Way. It shall include any person who authorizes or contracts with another to do any act, which leads to the Unauthorized Use of the County Secondary Roadway Right-of-Way. It is not a defense to this chapter that a person contracted with another person or entity and that the contractor did the act, which constituted the Unauthorized Use of the County Secondary Roadway Right-of-Way. A person contracting with another shall have an ongoing duty not to permit the contractor to do work which involves the Unauthorized Use of the County Secondary Roadway Right-of-Way and to oversee the work done in order to ensure that it does not involve the Unauthorized Use of the County Secondary Roadway Right-of-Way.

### 17.03 VIOLATIONS.

Evidence that work done on or to benefit a piece of property involved in the Unauthorized Use of the County Secondary Roadway Right-of-Way shall be prima fascia evidence that the owner and/or lessee of that property did authorize or permit the Unauthorized Use of the County Secondary Roadway Right-of-Way.

A landlord and tenant shall both be in violation of this chapter if the Unauthorized Use of the County Secondary Roadway Right-of-Way was done with the knowledge, consent, approval, or encouragement of the landlord. It shall be an “Affirmative Defense” to an action under this chapter if the Unauthorized Use of the County Secondary Roadway Right-of-Way was done solely by the authority of the tenant without any knowledge,

approval, consent, or encouragement by the landlord. A tenant has an independent duty not to violate this chapter. It is not a defense under this chapter for the tenant that the Unauthorized Use of the County Secondary Roadway Right-of-Way was done with the knowledge, approval, consent, or encouragement of the landlord unless the tenant played no part, directly or indirectly, in the action constituting the Unauthorized Use of the County Secondary Roadway Right-of-Way.

#### 17.04 OFFENSES AND PENALTIES.

The Unauthorized Use of the County Secondary Roadway Right-of-Way in Clarke County is hereby declared a public nuisance is prohibited.

The Unauthorized Use of the County Secondary Roadway Right-of-Way shall be a County Infraction as defined in Section 331.307 of the Code of Iowa.

Pursuant to Section 331.307 of the Code of Iowa, the penalty for the Unauthorized Use of the County Secondary Roadway Right-of-Way in Clarke County shall be a civil penalty of two hundred fifty dollars (\$250.00) for a first offense and five hundred dollars (\$500.00) for a repeat offense. A violation of this chapter is not punishable by imprisonment.

The Clarke County Attorney may ask that the Court waive any portion of the civil penalty that he/she deems appropriate.

Each twenty-four (24) hour period following the removal deadline specified in 17.05.b of this chapter that a person is in violation of this chapter is a separate and distinct offense.

Action under this chapter does not prevent or preclude any other civil or criminal action or remedy that may be applicable. In addition to the civil penalty for a violation of this chapter, any other remedies authorized under Section 331.307 may be utilized including but not limited to abatement/correction and assessment of costs.

#### 17.05 AUTHORIZATION PROCESS.

No action shall be a violation of this chapter if done with the written pre-authorization of the Clarke County Engineer. Written pre-authorization shall be in the form of a permit, which shall be issued at no charge. The Clarke County Engineer may set forth conditions, limitation, and/or specifications in the permit and may require the posting of a bond.

A permittee under this section may, when appropriate, seek a modification of the permit. The granting of the modification shall be at the discretion of the Clarke County Engineer.

A violation of the conditions, limitation and/or specification in the permit shall be considered the Unauthorized Use of the County Secondary Roadway Right-of-Way and a violation of this chapter.

Upon the violation of the conditions, limitation and/or of a permit, the Clarke County Engineer may, at his or her sole discretion:

1. Modify the permit.
2. Give the permitted notice of the violation and an opportunity, as set out in the notice, to cure the violation by a specified removal deadline.
3. Take steps to cure the violation and to assess the costs of the cure to be permitted.
4. Refer the matter to the Clarke County Attorney for legal action.
5. Take other appropriate action authorized in this chapter or actions authorized under the Code of Iowa.

The Clarke County Board of Supervisors may, at its sole discretion, by majority vote, waive any violation of this chapter that has not been referred to the Clarke County Attorney for legal action.

17.06 ABATEMENT COST.

Any person(s) responsible for the Unauthorized Use of the County Secondary Roadway Right-of-Way shall be strictly liable and responsible for the abatement and the costs of the abatement of the Unauthorized Use of the County Secondary Roadway Right-of-Way and for any damage(s) caused by the Unauthorized Use of the County Secondary Roadway Right-of-Way. The county's costs for abatement or correction of the violation may be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

17.07 ENFORCEMENT.

It shall be the duty of the Clarke County Engineer to identify violations of this chapter. Upon the request of the Clarke County Engineer, the Clarke County Attorney shall take those steps that he/she deems appropriate to enforce this chapter.

17.08 REPEALER.

All ordinances, resolutions or parts of ordinances and resolutions in conflict with the provisions of this ordinance are hereby repealed.

17.09 SEVERABILITY CLAUSE.

If any section, provision, or part of this chapter shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

17.10 WHEN EFFECTIVE.

The ordinance shall be in effect after its final passage, approval and publication as provided by law.