

ORDINANCE No 08-45

AN ORDINANCE OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA, RELATING TO REGULATING OBSTRUCTIONS, EXCAVATION, AND USE OF PUBLICLY MAINTAINED ROADS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Publicly Maintained Roads within the Town of Dewey-Humboldt (the "Town") are used for purposes other than public ingress and egress; and

WHEREAS, the Town can impose restrictions and limitations on the use of Publicly Maintained Roads pursuant to A.R.S. § 9-240(B)(3) and A.R.S. Title 9, Chapter 5, Articles 1.1 and 4, to protect the public safety and welfare.

NOW THEREFORE, be it ordained by the Mayor and Town Council that:

Section 1: Ordinance. An ordinance having the short title "Dewey-Humboldt Access Ordinance" is hereby adopted having the following provisions:

1. Definitions.

- 1.1 "Encroachment" means any obstruction (whether temporary or permanent, unless expressly authorized by law), any sign, any landscaping, any new driveway, any new other road connection, the diversion of waters, any excavation (whether or not conducted under a valid franchise), culvert installations (whether new or replacement), and any other construction on or within 5 feet of the greater of the Roadway Prism or the Publicly Maintained Road.
- 1.2 "Publicly Maintained Road" means the entire width of the right-of-way for any road under the exclusive control of the Town of Dewey-Humboldt, whether held by deed, easement, dedication, or other claim of right, including bridges, and which have been included in the Town Road Maintenance System.
- 1.3 "Roadway Prism" means the traveled road surface, shoulders and ditches.

2. General Provisions.

- 2.1 No Encroachment within a Publicly Maintained Road is allowed without a written permit from the Public Works Supervisor, except by authorized Town employees, contractors acting under a Town contract, and new subdivision improvements for which the Town holds financial assurances. No permittee shall violate the terms and conditions of a permit without written authorization from the Public Works Supervisor, and only when allowed by the provisions of the Dewey-Humboldt Access Ordinance.
- 2.2 No vehicle shall be operated or any other activity conducted on any concrete or asphaltic concrete surface in a fashion which damages the road surface or base without a permit from the Public Works Supervisor unless the use is specifically authorized by law.

- 2.3 No vehicle in excess of the A.D.O.T. limits for weight, length, width and height shall travel on a public road without a permit from A.D.O.T. No vehicle in excess of 7-ton capacity shall travel on a Publicly Maintained Road without a permit from the Public Works Supervisor.
 - 2.4 The Public Works Supervisor is authorized and instructed to prepare specifications, application forms, and permit forms detailing the conditions and restrictions under which the Encroachment is allowed, which will include at least the following:
 - 2.4.1. Culvert requirements;
 - 2.4.2. Paving requirements on and in the vicinity of driveways;
 - 2.4.3. Limitations on driveway access to arterial, major collector, and minor collector streets; and
 - 2.4.4. Limitations on the number of driveways that may be created when parcels are divided.
 - 2.5 Any permit issued is revocable at will, should it be necessary to protect the public safety or to allow road expansion.
 - 2.6 The Public Works Supervisor is authorized and directed to charge a permit fee in an amount authorized by the Town Council. The fee shall be specified on the permit. No utility franchised by the County under A.R.S. Title 9, Chapter 5, Articles 1.1 and 4, which pays a franchise fee based on gross sales as agreed to by the Town Council, shall be required to pay a permit fee.
 - 2.7 Emergency Encroachments, including excavation for public utility repairs necessary to protect the public safety, are allowed without a permit provided a permit is applied for the next working day, all traffic control and safety devices necessary are used, and final repairs are not performed until authorized by the Public Works Supervisor.
 - 2.8 In the event an obstruction of a Publicly Maintained Road occurs within the Roadway Prism without a permit so as to cause an immediate public hazard, the Town may remove the obstruction and seek reimbursements of the costs involved from the responsible person(s). In all other cases, the provisions of A.R.S. § 28-7054 apply.
3. Special Provisions relating to Excavation and Construction. The Public Works Supervisor shall prepare specifications to be included in Publicly Maintained Road Excavation and Construction Permits. The specifications shall include, but not be limited to the following:
- 3.1 Traffic control, including signs specified in the *Manual on Uniform Traffic Control Devices*.
 - 3.2 Procedures for repairing road cuts.
 - 3.3 A requirement for 95% backfill compaction within the Roadway Prism.

3.4 A provision prohibiting pavement cuts for a period of 5 years after completion or reconstruction of the pavement.

3.5 A requirement that any repair shall restore the road to the same or better condition.

4. Special Provisions relating to Utilities.

4.1 All utilities must be installed a minimum of 36 inches below the finished surface. Cable television cables shall be installed as specified by Town franchise. In the event there are special public safety concerns in the opinion of the Public Works Supervisor, three-dimensional, as-built drawings may be required upon completion of construction. The Town shall not be liable for damages caused to utilities installed at a depth of less than 36 inches.

4.2 In the event a public utility line within the Roadway Prism becomes exposed or prevents roadway maintenance, the Public Works Supervisor may require that the line be lowered or moved without expense to the Town.

4.3 Pursuant to A.R.S. Title 9, Chapter 5, Articles 1.1 and 4, the requirements in this Ordinance supersede the provisions of any utility franchise.

5. Variances. The Public Works Supervisor is authorized to grant variances from the restrictions and conditions specified herein provided: (1) the public safety and welfare will be protected; (2) the costs to the Town associated with the variance are fully borne by the applicant for the variance by conditions on the variance, which may include a payment requirement; and (3) the Town manager approves in writing.

6. Remedies and Penalties.

6.1 In the event the conditions of a permit are violated or a permit is not obtained, the Public Works Supervisor may suspend the permit, if any, and order that all work cease until the violation is corrected or a permit obtained. If the work is abandoned and not repaired to Town specifications, the Town may repair the work and recover the costs of repair from the person(s) responsible.

6.2 Any person commencing work without a permit shall be required to obtain a permit and shall pay twice the usual permit fee.

6.3 Any person who is convicted of a violation of this Ordinance is guilty of a Class 1 misdemeanor.

7. Duration of Permit. A permit to excavate or construct shall be valid for 30 days from the date it is issued. Permittees shall notify the Public Works Supervisor 24 hours prior to commencing work and no later than the next business day after completion. A copy of the permit shall be available at the location of the work, and shall be made available to the Public Works Supervisor upon request.

Section 2: Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 3: Effective Date. The provisions of Section 1 of this Ordinance shall be effective as of the 1st day of January 2009.

PASSED AND ADOPTED by the Mayor and Council of the Town of Dewey-Humboldt, Arizona, this 21st day of October, 2008.



Earl Goodwin, Mayor

ATTEST:

APPROVED AS TO FORM:



Judy Morgan, Town Clerk



Kenton Jones, Town Attorney

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