

## ORDINANCE # 2009-1

### Cherokee County Secondary Roads Right-of-Way Ordinance

BE IT ORDERED BY THE BOARD OF SUPERVISORS OF CHEROKEE COUNTY, IOWA, THAT THE FOLLOWING ORDINANCE #2004-2 PROHIBITING THE UNAUTHORIZED USE OF SECONDARY ROADWAY RIGHT-OF-WAY AND OBSTRUCTING COUNTY ROAD DITCHES FOR CHEROKEE COUNTY IS HEREBY AMENDED BY ADDING TO SECTIONS I(2)(b), I(2)(c), AND III(2)(A) THE FOLLOWING BOLDED ITALIZED LANGUAGE TO SAID SECTIONS OF THIS ORDINANCE:

#### SECTION I. PREAMBEL AND BOARD FINDINGS

1. Section 331.301(1) of the Code of Iowa provides that a County may, except as expressly limited by the Constitution, and if any inconsistent with the laws of the General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the County or its residents and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents.
2. The Cherokee County Board of Supervisors FINDS as follows:
  - a. The Unauthorized Use of Secondary Road Right-of-Way is a problem in Cherokee County.
  - b. This problem includes, but is not limited to, 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 *snow*, trash, junk, rocks, corn cobs, 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.
  - c. 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 snow removal or road maintenance equipment/machinery*, damage or shorten the life expectancy of the roadway or create hazardous obstructions in the roadway.
  - d. The Unauthorized use of Secondary Roadway Right-of-Way, therefore endangers the health, safety and welfare of the citizens of Cherokee County.
3. The Cherokee Board of Supervisors further FINDS that it is necessary to prevent the unauthorized use of County Secondary Roadway Right-of-Way.

#### SECTION II. TITLE

1. This Ordinance shall be known and may be cited as the Cherokee County Secondary Roadway Right-of-Way Ordinance.

#### SECTION III. 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. "County Secondary Roadway Right-of-Way" includes the traveled portion of the roadway, the shoulders and the ditches and embankments, including both fore slopes attached to any County Secondary Road that are used for

roadway purposes. The widths of these properties vary and have been removed from taxation due to their public usage.

2. (A) "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 Cherokee County Engineer and that occurs after the effective date of this Ordinance. It includes, but is not limited to, 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 alteration of ditches, water breaks and drainage tiles on the County Right-of-Way; the placement of *snow*, trash, 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.  
(B) "Obstructing County Road Ditches" means the placement or permitting the placement of any object or thing in a ditch that will or could obstruct the flow of water through, in or over said ditch.
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 driving on the traveled portion of the roadway or parking a vehicle on the shoulder of the roadway for less than two (2) hours or parking a disabled vehicle on the shoulder of the roadway for less than twenty-four (24) hours.
5. "Unauthorized Use of the County Secondary Roadway Right-of-Way" does not include the actions of the Cherokee County Engineer or any agency of Cherokee County or the State of Iowa.
6. "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.
7. "Any person(s) responsible" 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 Ordinance 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.
8. Evidence that work done on or to benefit a piece of property involved the Unauthorized Use of the County Secondary Roadway Right-of-Way shall be prima facie 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.
9. A landlord and tenant shall both be in violation of this Ordinance 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 action under the Ordinance if 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.

#### **SECTION IV. OFFENSES AN PENALTIES**

1. The Unauthorized Use of the County Secondary Roadway Right-of-Way or obstruction of county road ditches in Cherokee County is hereby declared a public nuisance and is prohibited.
2. The Unauthorized Use of the County Secondary Roadway Right-of-Way or obstruction of county road ditches shall be a County Infraction as defined in Section 331.302(15) of the code of Iowa.
3. Pursuant to Section 331.302(15) of the Code of Iowa, the penalty for the Unauthorized Use of the County Secondary Roadway Right-of-Way in Cherokee County shall be a civil penalty of two hundreds fifty dollars (\$250.00) for a first offense and five hundred dollars (\$500.00) for a repeat offense. A violation of this Ordinance is not punishable by imprisonment.
4. The Cherokee County Attorney may ask that the court waive any portion of the civil penalty that he/she deems appropriate.
5. Each twenty-four (24) hour period following the removal deadline specified in Section V.6.b that a person is in violation of this Ordinance is a separate and distinct offense.
6. Action under this Ordinance does not prevent or preclude any other civil or criminal action or remedy that may be applicable.
7. In addition to the civil penalty for a violation of this Ordinance, any other remedies authorized under Section 331.307(9) may be utilized, including but limited to, abatement/correction and assessment of costs.

#### **SECTION V. AUTHORIZATION PROCESS**

1. No action shall be a violation for a violation of this Ordinance if done with the written preauthorization of the Cherokee County Engineer.
2. Written preauthorization shall be in the form of a permit, which shall be issued at no charge.
3. The Cherokee County Engineer may set forth conditions, limitations and/or specifications in the permit and may require the posting of a bond.
4. 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 Cherokee County Engineer.
5. A violation of the conditions, limitations and/or specifications in the permit shall be considered the Unauthorized Use of the County Secondary Roadway Right-of-Way and a violation of this Ordinance.
6. Upon the violation of the conditions, limitations and/or specifications of a permit, the Cherokee County Engineer may, at his or her sole discretion:
  - a. Modify the permit.
  - b. Give the permittee notice of the violation and an opportunity, as set out in the notice, to cure the violation by a specified removal deadline.
  - c. Take steps to cure the violation and to assess the costs of the cure to the permitted.
  - d. Refer the matter to the Cherokee County Attorney for legal action.
  - e. Take other appropriate action.

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

**SECTION VI. ABATEMENT COST**

- 1. 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 cost 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. (See Iowa Code 331.307(9)(e)).

**SECTION VII. ENFORCEMENT**

- 1. It shall be the duty of the Cherokee County Engineer to identify violations of this Ordinance.
- 2. Upon the request of the Cherokee County Engineer, the Cherokee County Attorney shall take those steps that he/she deems appropriate to enforce this Ordinance.

**SECTION VIII. MISCELLANEOUS PROVISIONS**

- 1. All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.
- 2. If any section, provision or part of this Ordinance is legislatively or judicially invalidated, those portions of the Ordinance not legislatively or judicially invalidated shall remain in effect.
- 3. This Ordinance is deemed of immediate importance and will take effect upon final publication.

Action on First Consideration

MSP Leeds, Schmidt: all votes aye  
Date: 1-13-09

Action on Second Consideration


MSP Graybill, Schmidt: all votes aye  
Date: 1-20-09

Action on Third and Final Consideration

MSP  
Date: 1-27-09

Passed and approved this 27<sup>th</sup> day of January, 2009.

CHEROKEE COUNTY BOARD OF SUPERVISORS

  
\_\_\_\_\_  
Jeff Simonson, Chairman

Dean Schmidt  
Dean Schmidt

Terry Graybill  
Terry Graybill

Mark Leeds  
Mark Leeds

Larry Prunty  
Larry Prunty

ATTEST:

Kris Glienke  
Kris Glienke, Cherokee County Auditor

Summary  
Published on the 7<sup>th</sup> day of January, 2009.