

## **BARTOW COUNTY RIGHT-OF-WAY ORDINANCE**

AN ORDINANCE OF THE COUNTY COMMISSIONER OF BARTOW COUNTY SITTING FOR COUNTY PURPOSES FOR THE PURPOSE OF **ADOPTING A RIGHT-OF-WAY ORDINANCE; REGULATING THE USE OF BARTOW COUNTY RIGHTS-OF-WAY; RESTRICTING MAILBOXES FOR PUBLIC SAFETY; PROVIDING FOR ENFORCEMENT; AND FOR OTHER PURPOSES** AT THE REGULAR MEETING OF THE COMMISSIONER OF BARTOW COUNTY HELD ON JUNE 6<sup>TH</sup>, 2007.

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**WHEREAS**, Bartow County owns various rights-of-way for county roads throughout the County; and

**WHEREAS**, massive stone and masonry mailboxes pose a risk to the public safety; and

**WHEREAS**, the County is authorized to adopt regulations governing the County road system, by O.C.G.A. § 32-4-42, and encroachment onto County roads and right-of-way is prohibited by O.C.G.A. § 32-6-1,

**WHEREAS**, the Commissioner finds it in the best interest to adopt the Right-of-way ordinance to govern encroachments on the County rights-of-way,

**NOW THEREFORE BE IT ORDAINED AND IT HEREBY IS ORDAINED**, by virtue of the authority vested in the Commissioner by law, that the Bartow County Right-of-Way Ordinance is adopted as follows:

### **Section 1. Title**

This Ordinance shall be known as the “Bartow County Right-of-Way Ordinance.”

### **Section 2. Purpose**

The purpose of this Ordinance is to provide for the regulation of the Bartow County Road Rights-of-way, pursuant to the powers vested in the County by O.C.G.A. § 32-4-42 and § 32-6-1. It is further the purpose of this ordinance to:

- A. Protect the public health, safety and welfare by ensuring that new mailbox supports erected in the right-of-way are constructed so as not to pose a hazard to road users; and
- B. Prevent encroachments into the County rights-of-way and provide for removal of said encroachments, to secure the public health, safety and welfare.

### **Section 3. Definitions**

The following words shall have the following meanings in this Ordinance. Except as specifically defined herein all words used in this Ordinance shall carry their customary meaning as defined by a standard dictionary.

“Encroachments” means any building, structure, or vehicle, or other object or thing (including but not limited to mailboxes, signs, cars, gates, walls, sprinkler systems, trees, posts, etc.) which is located in the right-of-way. “Encroach” means to be within the right-of-way.

“Materially injure” means damaging the pavement or right-of-way to the extent that a repair is or will be required by the Road Department in order to bring the pavement or right-of-way back to County standards. It shall also mean causing more than \$50 damage to the right-of-way or pavement, considering the labor cost and materials to repair the injury, whether or not such repair is undertaken by the Road Department.

“Obstruct,” includes without limitation, the causing of any buildup of rock, gravel, mud, dirt, chemicals, or other materials by continued ingress or egress of vehicles or of any natural waters dammed or redirected by diversion to an extent which presents a hazard to the traveling public. It shall also include negligently or intentionally dropping objects onto the road that present a hazard to the traveling public, including ladders, trash, debris, branches, cement, etc.

“Right-of-way” means any right-of-way that has been accepted by Bartow County into the County roads, and such term includes the full width of the right-of-way, and not just width of the pavement. Such term also includes rights-of-way acquired by prescriptive easement, or pursuant to O.C.G.A. § 44-5-163 or O.C.G.A. § 32-3-3, or any other means.

“Road Department Head” means the official who is the Department Head of the Bartow County Road Department, or his or her designee.

#### **Section 4. Prohibitions**

- A. It shall be unlawful for any person to obstruct, encroach upon, or injure materially any part of any County right-of-way or County road pavement.
- B. No encroachments are permitted in any right-of-way of Bartow County without permission of the Road Department Head, unless otherwise permitted by this Ordinance.
- C. No building, structure, service area, or required off-street parking and loading facilities, except driveways, shall be permitted to encroach on County rights-of-way.
- D. The County shall owe no compensation for removal of illegal encroachments or obstructions.

#### **Section 5. Permitted Encroachments**

- A. Driveways. Driveways (including paved, masonry, asphalt, etc) are permitted to encroach on the right of way. A driveway permit shall be required and the lot owner shall secure permission for any new driveway from the Road Department. Driveways must meet sight distance requirements of Road Department, and must be constructed in compliance with County requirements for stormwater drainage/piping.

B. Landscaping. Limited landscaping is permitted in the County right-of-way, including grass, flowers and shrubs not in excess of two feet in height. Trees shall not be planted in the right of way. Irrigation systems shall not be installed in the right-of-way.

C. Mailbox Support Structures. The County permits limited encroachment of the right-of-way for mailbox support structures, which meet the following standards:

1. The use of massive mailbox support structures that, when struck, could damage vehicles and cause serious injury to vehicle occupants are prohibited. Heavy metal posts, concrete posts, brick bases, and miscellaneous items such as farm equipment or supports filled with concrete are also prohibited and cannot be used for mailbox supports.

2. Acceptable mailbox supports include: a) a single 4-inch by 4-inch or 4 inch diameter wooden post; b) a metal post with strength no greater than a 2 inch diameter standard strength steel hollow pipe; or c) other support of no greater strength, as approved by the Road Department, as in accordance with the standards of the AASHTO Roadway Design Guidelines for mailbox structures, which are incorporated herein by reference. In the event the property owner has any question as to whether the proposed mailbox support will be permitted, the Road Department should be consulted.

3. Mailbox supports must be embedded no more than 24” into the ground. A metal post shall not be fitted with an anchor plate, but it may have an anti-twist device that extends no more than 10” below the ground surface.

4. Mailboxes. The post-to-box attachment details should be of sufficient strength to prevent the box from separating from the post top if a vehicle strikes the installation. The mailbox itself should be of lightweight steel, wood, or plastic/composite construction, and meeting U.S. Postal Service regulations.

## **Section 6. Non-Conforming Encroachments**

A. All encroachments pre-existing the date of adoption of this Ordinance may remain as non-conforming encroachments, unless and until removal is ordered by the Road Department Head, for utility work, road work or other work necessitating access to the right-of-way. For pre-existing encroachments, the County shall give 30 days notice of removal (unless the encroachment presents a safety hazard).

B. Any structure pre-existing the Ordinance which is damaged or removed shall not be replaced in kind and must be replaced in accordance with the requirements of the Ordinance.

C. The County shall owe no compensation for removal of non-conforming encroachments.

## **Section 7. Administration and Enforcement**

A. Administration. This Ordinance shall be administered by the Road Department Head. The Road Department Head shall have the authority to issue permits for encroachments in the

rights-of-way not specified above, and any question if interpretation or administration shall be determined by that official. The appeal of any decision by the Road Department Head shall be to the Commissioner of Bartow County.

B. Enforcement Powers. The Road Department Head and the County Sheriff, as well as County Code Enforcement Officers, and County Attorney, are empowered to enforce this Ordinance. The foregoing shall be empowered to issue citations, seek other civil relief, or issue stop work orders for violations of this Ordinance. Any person, firm, partnership, corporation or other legal entity who shall do anything prohibited by this Ordinance as the same exists or as it may hereafter be amended or which shall fail to do anything required by this Ordinance as the same exists or as it may hereafter be amended shall be subject to an enforcement action.

C. Right of Removal. The Road Department shall have the authority to remove without notice any encroachment or obstruction of the right-of-way. The Road Department shall also have the authority to issue a notice of removal to property owners giving them up to 30 days to remove an unpermitted encroachment.

D. Criminal Prosecution. The Road Department Head, County Sheriff, or designated code enforcement personnel, or other authorized personnel, may issue criminal citations for violations of this ordinance, or violation of any stop-work order.

1. Criminal prosecutions for violation of this Ordinance shall be commenced by the completion, signing, and service of a citation by an authorized county official. No warning need be issued prior to a citation being issued. The original of the citation shall be personally served upon the accused, his or her authorized representative or, if a corporation, an officer of the corporation or its on-site representative or the person or persons in charge of the activity on the property, and a copy shall be promptly filed with the magistrate court. A stop-work order may be issued in conjunction with a citation.
2. Each citation shall state the time and place at which the accused is to appear for trial in magistrate court, shall identify the offense with which the accused is charged, shall have an identifying number by which it shall be filed with the Court, shall indicate the identity of the accused and the date of service, and shall be signed by the deputy sheriff or other authorized officer who completes and serves it.
3. Any Defendant who fails to appear for trial shall thereafter be arrested on the warrant of the Magistrate and be required to post a bond for his or her future appearance.
4. The District Attorney, County Attorney, or another attorney designated by Bartow County may act as prosecuting attorney for violations of this Ordinance.
5. Minimum fines for violations of this Ordinance shall be \$200 for the first violation, and \$400 for subsequent violations. The maximum permissible fine shall be \$1,000 per offense. The magistrate court may impose other penalties under its jurisdiction, including up to 60 days incarceration, probation, and restitution or reimbursement costs.

6. **Daily Violations.** Each day during which the violation or failure or refusal to comply continues shall constitute a separate violation, subjecting the offender to a new citation, or other civil or criminal proceeding.

E. **Civil Fines and Proceedings.** In addition to or in lieu of any other remedy, the County may seek injunctive, mandamus or other appropriate relief in superior court to enjoin or prevent a violation of any provision of this Ordinance. Such action may also seek civil fines at the mandatory rates specified in Section 7(D)(6) above for violation of this Ordinance, and may additionally seek the costs of restitution, and any other costs associated with the action to enjoin or prevent any violation of any provision of this Ordinance. The County shall be entitled to its reasonable attorney's fees and costs for bringing an action in superior court wherein any relief is granted or fine assessed.

F. **Stop Work Orders.** Upon notice from the Road Department Head, work on any encroachment into the right-of-way that is being done contrary to the provisions of this Ordinance, or in a dangerous or unsafe manner, shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Where an emergency exists, the Road Department Head shall not be required to give a written notice prior to stopping the work, with a written order to be provided within three working days.

G. **False Statements.** The Road Department Head may revoke a permit or approval, issued under the provisions of this Ordinance, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

H. **Permit Revocation.** The Road Department Head may revoke a permit or approval, issued under the provisions of this Ordinance, upon determination by the Road Department Head that the structure or encroachment for which the permit or approval was issued is in violation of, or not in conformity with, the provisions of this Ordinance.

I. **Notice of Removal.** Where the Road Department Head determines that an encroachment must be removed from the right-of-way for construction, maintenance or safety purposes, he may (but is not required to unless otherwise specified herein) issue a notice of removal, giving up to 30 days to remove the structure. After the deadline, the structure may be removed by the County with the costs to be charged to the property owner. The owner may also be cited, fined or have other enforcement action taken against him to secure compliance with this ordinance and/or reimbursement.

## **Section 8. Severability**

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid. It is the intent that any provision declared unconstitutional shall be severed from the Ordinance, and the remainder of the Ordinance remain in effect.

**BE IT FURTHER ORDAINED** AND IT IS HEREBY ORDAINED that all Resolutions and Ordinances in conflict herewith are hereby repealed provided, however, that any portion of said Resolutions or Ordinances not in conflict herewith shall remain in full force and effect.

**SO ADOPTED** this 6th day of June, 2007, to be effective immediately, the public health, safety, and welfare demanding.

ATTEST:

BARTOW COUNTY, GEORGIA

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Kathy Gill, Clerk

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Clarence Brown, Commissioner