

WINNEBAGO COUNTY ORDINANCE NO. 3

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF WINNEBAGO COUNTY

AN ORDINANCE TO ESTABLISH THE POLICY IN RESPECT TO AN OBSTRUCTION CREATED OR ANY WORK PERFORMED WITHIN THE RIGHT OF WAY OF A WINNEBAGO COUNTY SECONDARY ROAD.

Section 1. "Obstruction" means anything placed in a secondary road right of way by persons other than persons authorized to do so by the Winnebago County Board of Supervisors. It includes property such as fences, growing crops, rocks, trash, corn cobs, piles of brush, abandoned vehicles or machinery, billboards, advertising signs or devices, open ditches, and water breaks, and includes the cultivation of the Right Of Way.

"Board" means the Winnebago County Board of Supervisors or its designees.

"Engineer" means the Winnebago County Engineer or his designees.

"Attorney" means the Winnebago County Attorney or his assistant.

All other terms shall be interpreted as construed in accordance with the provisions of Chapter 4, Code of Iowa, and generally as an implementation of or in harmony with Chapter 319, Code of Iowa.

Section 2. (1) The creation by any person of an obstruction in Winnebago County is declared a public nuisance and is prohibited.

(2) A person shall not excavate, fill, or make any physical change within the right of way of a secondary road without obtaining a permit from the Board. Any work performed under the permit shall be performed in conformity with the specifications prescribed by the Board, and this may include the posting of bond. If the excavation, fill, or physical change within the right of way does not conform to the specifications that accompany the permit, the permittee shall be reasonably notified by the Board or Engineer to make such conforming changes. If after twenty (20) days the changes have not been made, the Board of Engineer may make the necessary changes and immediately send a statement of the cost to the permittee. If within ten (10) days after sending the statement the cost is not paid, the Board through the Attorney may institute proceedings in district court to collect the cost of correction.

(3) The Engineer and utility companies are exempt from the provisions of this Section.

(4) Any person who violates the provisions of this Section for a twenty-four (24) hour period shall, upon conviction, be fined up to one hundred dollars (\$100.00) or imprisoned in the County Jail for up to thirty (30) days. Each twenty-four (24) hour period is a separate and distinct violation.

Section 3. In the event the Engineer identifies obstructions, he may attempt to persuade the person responsible for the obstruction to remove it, or the Engineer may proceed under Section 4 or Section 5 of this Ordinance, or both.

Section 4. (1) If the Engineer deems an obstruction to constitute an immediate and dangerous hazard, he may without notice or liability in damages, cause the obstruction to be removed and the costs of removal to be assessed against;

- (a) The owner of any billboard, advertising sign or device so removed.
- (b) The vehicle or machinery owner in the case of abandoned vehicles or machinery.
- (c) The abutting property in the case of fences and other obstructions placed by the owner of or the tenant on said property.
- (d) The owner or person responsible for placement of all other obstruction.

(2) If the Engineer does not deem an obstruction to be such a hazard, he may, without liability after forty eight (48) hours notice to the person who would be assessed for County costs of removing the obstruction, this notice being served in the manner in which an original notice is served or in writing by certified mail, cause the obstruction to be removed and the costs of removal to be assessed in the same manner as specified in subsection one (1) of this Section. Notice shall be reasonably calculated to apprise the recipient of the impending action and liability.

(3) Upon removal of the obstruction, the Engineer may immediately send a statement of the cost of removal to the person assessed. If within ten (10) days after sending the statement the cost is not paid, the Engineer through the Attorney may institute proceedings to collect the cost of removal.

Section 5. Upon request of the Board, or in his prosecutorial discretion, the Attorney may bring action to enjoin or abate an obstruction, to collect damages caused by an obstruction, including the costs of removal, and to pursue any other appropriate remedy, including criminal prosecution under Section 2 (4) of this Ordinance or Chapter 716, Code of Iowa .

Section 6. When Effective. This ordinance shall be in effect after its final passage, approval, and publication as provided by law and Winnebago County Ordinance No. 1.

Winnebago County Ordinance No. 3 is hereby approved and adopted upon second and final reading by unanimous vote of the Winnebago County Board of Supervisors this 10th day of June 1986 .

ATTEST:

Robert D. Paulson
Robert D. Paulson
County Auditor

WINNEBAGO COUNTY BOARD OF SUPERVISORS

Alanzo Johnson
Alanzo Johnson, Chairman

Don S. Grotewold
Don S. Grotewold, Member

Robert Langfald
Robert Langfald, Member