

ORDINANCE NO. 2003-01

AN ORDINANCE REQUIRING THAT INDIVIDUALS AND ENTITIES MAKE APPLICATION AND OBTAIN PERMISSION FROM THE COUNTY OF LINCOLN PRIOR TO CONSTRUCTION OF ACCESS FOR ANY PURPOSE THROUGH OR ACROSS PLATTED TOWNSITES OR DEDICATED COUNTY RIGHTS-OF-WAY; PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE; REPEALING ORDINANCES IN CONFLICT; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 4-37-1, NMSA 1978, the Board of County Commissioners of the County of Lincoln is empowered to enact regulations which provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the citizens of the County of Lincoln; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that an ordinance requiring prior approval from the County of Lincoln prior to any individual or entity constructing any access through or across any platted townsite or dedicated County rights-of-way would serve a valid public purpose; and

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF LINCOLN, NEW MEXICO:

Section 1. Short Title.

This Ordinance may be cited as the “County of Lincoln Right-of-Way Access Ordinance.”

Section 2. Jurisdiction.

This Ordinance shall apply to the public rights-of-way or other public places of Lincoln County, New Mexico with the exception of incorporated municipalities, unless municipalities by ordinance adopt these regulations and enter into interlocal agreements with the County for enforcement.

Section 3. Definitions.

- A. “Commission” means the Board of County Commissioners of the County of Lincoln, New Mexico.
- B. “County” means County of Lincoln, New Mexico.
- C. “County right-of-way” shall mean the total area of land deeded, reserved by plat, or otherwise acquired by Lincoln County primarily for the use of the public for the movement of people, goods and vehicles. County rights-of-way are held by dedication or prescriptive right.
- D. “County roadway” shall mean the improved surface of the right-of-way used by vehicular traffic primarily for the use of the public for the movement of people, goods and vehicles.
- E. “Townsite” means a portion of the public domain segregated by proper authority and procedure as the site for a town. (*See NMSA 1978, § 19-4-1, et seq.*)

Section 4. Application and Permission Required Prior to Construction.

A. Individuals or entities who wish to access through or across a platted townsite or dedicated County right-of-way are hereby required to make application to the County of Lincoln Road Department and obtain permission prior to beginning any construction.

B. Prior to construction through or across any platted townsite or dedicated County right-of-way, the individual or entity requesting access authorization shall first submit a detailed drawing or plans for the project and provide proof that he or she is the owner of property abutting a particular townsite or dedicated County right-of-way for which access is sought. Approval shall not be unreasonably refused. Such ingress and egress shall constitute an “easement of use” as to platted townsite or dedicated County roadways or rights-of-way.

C. There shall be no construction or excavation on or across any platted townsite or dedicated County right-of-way excavation without the County's prior consent. Such easement of use shall

be subject to reasonable use of the road and shall not create a dangerous and serious traffic hazard. Construction shall be accomplished so as not to interfere with the *nature of the easements* of others, which shall include right of light and air, and the right of view of abutting property owners, nor shall it hinder the public safety.

D. In accordance with this Section, application shall be made at the County Road Yard in Capitan, New Mexico, at least thirty (30) working days prior to the date when work is scheduled to commence. Application may also be made by in person, or mail at the following address:

Lincoln County Road Department
P.O. Box 666
Capitan, New Mexico 88316
(505) 354-2922

Authorization, if appropriate, must be issued by the County Road Superintendent, or his designee, no more than five (5) business days after receipt of an application at the above-referenced office.

E. Individuals or entities who wish to access through or across a platted townsite or dedicated County right-of-way are required to publish notice, in a newspaper of general circulation, or personally notify, in writing, all adjoining property owners of such proposed construction or excavation prior to commencement.

Section 5. Penalties.

Any person who violates any of the provisions of this Ordinance shall be punished by a fine of up to three hundred dollars (\$300) and/or imprisonment of no more than ninety (90) days, or both.

Section 6. Severability.

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase,

clause, sentence, paragraph, or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 7. Conflict Clause.

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. Effective Date.

This Ordinance shall take effect thirty days after recording in the Public Records of Lincoln County.

PASSED, APPROVED, and ADOPTED this 21 day of January, 2003.

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