

## **FREMONT COUNTY ROAD AND BRIDGE DEPARTMENT POLICY**

### **USE OF UNCONSTRUCTED COUNTY ROAD RIGHTS OF WAY**

**APPLICABILITY:** This policy shall apply to use of county road rights-of-way (ROW) by members of the general public, in circumstances where:

1. The road for which the ROW exists has not been constructed; and
2. The ROW is not being used for public access of any type or manner across the lands upon which the ROW is located.

#### **STATEMENT OF POLICY:**

1. Property owners whose lands adjoin unconstructed, unused county rights-of-way may make temporary use of such ROW for their own personal use, consistent with the following guidelines:

- a. A property owner's temporary use of an adjoining ROW may include only the portion of the ROW immediately adjoining such owner's land and may extend no further than the center line of the ROW.
- b. Any use of a ROW shall be temporary in nature. No permanent structures, buildings, sheds, barns, trees, ditches, canals, pipelines, facilities for holding water, signs, private utility service lines, or other similar obstructions or impediments may be located or placed in the ROW.
- c. Any fences placed in the right of way shall be no more permanent in nature than a fence constructed with metal or wood posts and wire.
- d. The property owner who elects to make temporary use of a ROW shall assume full responsibility for maintenance of the ROW, including weed control, drainage and erosion control. The property owner shall be liable and shall indemnify the county for any action or inaction occasioned by such property owner that causes harm or injury to the ROW.

2. Any resident or citizen who seeks to use any ROW that is under temporary use by a private landowner may file a request with the Fremont County Road and Bridge Department for use of the ROW. Such request shall state the proposed use and shall include any information that supports the need for the temporary use to terminate.

3. The Road and Bridge Department, through the Road Foreman in whose district the ROW is located, shall consider the request for termination of temporary use of the ROW and shall determine if the termination of the temporary use is necessary for legitimate public purposes, such as providing access to property that would otherwise be without public access, placement of public utilities, or similar uses. Use of the ROW for mere convenience of a

requesting citizen may also be considered, but shall be weighed against other factors such as benefit or burden to the county, county cost for maintenance, hardship caused by the current temporary use, and other relevant factors.

4. The Road and Bridge Foreman shall provide a written decision to the resident or citizen requesting use of the ROW within 30 days after receiving the request. The resident or citizen may appeal any such decision to the Board of Commissioners, which shall be heard and decided within 30 days, at a regular or special meeting of the Board. The requesting resident or citizen and the Road and Bridge Foreman shall be entitled to appear before the Board of Commissioners to present their respective positions on the matter.

5. The decision of the Board of Commissioners shall be final and binding upon the citizen or resident and the county. No decision of the Board shall preclude future requests for use of the ROW or for termination of any temporary use allowed under this Policy. Such future request shall not be considered if it is based on solely the same facts or information used in a previous, denied request.

6. If the decision of the County requires that the ROW be reopened, all parties that have enjoyed the temporary use of the ROW shall immediately return it to “pre incursion” condition.

7. Parties whose temporary use of ROW is terminated according to this policy shall hold the County harmless for any cost or incidental burden incurred in returning said ROW to “before incursion” condition.

Approved and Adopted this \_\_\_\_\_ day of June, 2008.  
Board of County Commissioners for Fremont County