

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF LINCOLN

ORDINANCE NO. 285

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AN ORDINANCE REPEALING ORDINANCE NO. 133 CODIFIED AS LINCOLN COUNTY CODE SECTIONS 6.605 AND 6.610, AMENDING THE LINCOLN COUNTY CODE BY ADDING NEW SECTIONS CODIFIED AS 6.605 THROUGH 6.635, SHORT TITLE "WAY OF NECESSITY," AND DECLARING AN EMERGENCY

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THE BOARD OF COMMISSIONERS FOR THE COUNTY OF LINCOLN ORDAINS AS FOLLOWS:

SECTION I:

That Lincoln County Ordinance No. 133, codified in the Lincoln County Code as Section 6.605 and 6.610, is hereby repealed.

SECTION II:

That the Lincoln County Code, adopted as Ordinance No. 155, is hereby amended to add the following sections (additions in boldface):

6.605 Area of Application

Sections 6.605 through 6.625 shall be known as the Way of Necessity Ordinance and shall apply within the boundaries of Lincoln County. These sections supplement the state statutory requirements for ways of necessity found in ORS 376.150 through 376.200.

6.610 Definitions

As used in the Way of Necessity Ordinance, unless the context requires otherwise:

1. "Public road" means the entire right-of-way of any road over which the public has a right of use or any right-of-way held by the state or a political subdivision of the state for road purposes that is not open for public use.
2. "Way of necessity" means a road established under ORS 376.150 to 376.200 to provide motor vehicle access from a public road to land that would otherwise have no motor vehicle access.

6.615 Petition

A petition for way of necessity on forms provided by Lincoln County shall be submitted by petitioner and accompanied by a filing fee in the amount of \$150 paid to the county clerk. Additionally, a bond or other security acceptable to the county, in the amount of \$1,000, shall be paid or provided to the county. Said bond or security shall be a deposit under ORS 376.165 to cover county expenses. Payment of the bond shall not relieve petitioner of the responsibility to pay the full costs incurred by county in the procedures for a way of necessity under ORS 376.175. If the costs exceed the \$1,000 bond or security, petitioner must pay the additional costs before the way of necessity shall become effective. If the costs are less than \$1,000, petitioner shall be entitled to a refund by order of the Board of Commissioners.

6.620 Jurisdiction

Jurisdiction over ways of necessity shall lie with the Lincoln County Board of Commissioners. Nothing in this ordinance shall affect a proceeding to establish a way of necessity, if the proceeding was initiated before the Circuit Court before the effective date of this section, except where a petition is dismissed by the Circuit Court.

6.625 Hearings

Hearings, in accordance with ORS 376.150 through 376.200, shall be scheduled by county upon receipt of a completed application and payment of all appropriate fees. Petitioner shall be responsible for effecting service as required by law and entering proof of service into the record of the hearing proceedings. The report required under ORS 376.160 shall normally be prepared jointly by the county engineer and county legal counsel. Other persons may be appointed by the governing body to investigate and submit the report as determined on a case-by-case basis.

6.630 Completed Petitions

Petitioner shall complete petitions in a form established by county. A completed petition must include all supplementary documents or information required by county. No proceedings will be scheduled until or unless a completed petition has been provided to the county.

6.635 Allocation of Cost

If a way of necessity is granted by the Board of Commissioners:


1. The entire expense of constructing the way of necessity shall be borne by the petitioner.
2. The way of necessity shall be maintained and kept passable by the petitioner, and the county shall not be required to work, improve, maintain or repair the way of necessity.
3. Petitioner shall be responsible and liable for all accidents, damage, or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of the way of necessity for which the petitioner may be legally liable.
4. Petitioner shall indemnify and hold harmless the county and all officers, employees, or agents of the county against any and all damages, claims, demands, actions, causes of action, costs, and expenses which they may sustain by reason of the acts of petitioner or his/her agent in connection with the construction, maintenance, or use of a way of necessity.
5. A way of necessity shall be constructed only at the locations specified in the order granting such way of necessity.
6. The way of necessity shall be located at the nearest practicable and safe point for connection to a public road. The way of necessity shall not be located in an area which creates a traffic hazard or decreases safety on a public road.
7. A way of necessity may be established only for use in connection with the property for which the way of necessity was sought. It is subject only to uses which are described in the order establishing the way of necessity.
8. Petitioners must comply with the conditions for a way of necessity found in ORS 376.180. Requests for variances to those conditions, where allowable by the Board, must be presented by the Petitioner in the application for a way of necessity and specifically determined in the order granting the way of necessity.

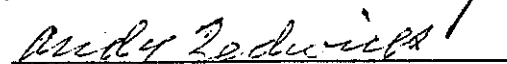
SECTION III: EMERGENCY CLAUSE

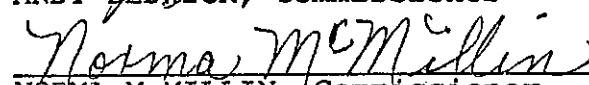
This ordinance, being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall become effective on the date of adoption.

DATED this 20th day of December, 1989.

LINCOLN COUNTY BOARD OF COMMISSIONERS

  
FRANK ARMSTRONG, Chairman

  
ANDY ZEDWICK, Commissioner

  
NORMA McMILLIN, Commissioner