

ORDINANCE 19

BERRIEN COUNTY RIGHT OF WAY ORDINANCE NO. 1

THE COUNTY OF BERRIEN, STATE OF MICHIGAN, ORDAINS:

SECTION 1. PURPOSE AND AUTHORITY

In order to promote public safety and the protection of property, by regulation of activities associated with the construction, operation, use and/or maintenance of a driveway, private road, approach or other such access or activity within the county road rights of way, it is necessary and appropriate to provide for enforcement of said regulations within Berrien County, State of Michigan. MCL 46.11(j) authorizes the County Board of Commissioners to pass ordinances relating to county affairs. This Ordinance is intended to regulate activities within the county road rights of way.

SECTION 2. DEFINITIONS

The definitions of words, terms and phrases used in this Ordinance shall incorporate by reference the definitions set forth in the Motor Vehicle Code and the State Motor Carrier Safety Act, respectively, and shall have the meaning ascribed to them in said statutes, except where the context clearly indicates a different meaning.

SECTION 3. DESIGNATION OF LOCAL AUTHORITY

The local authority designated in this Ordinance shall be the Berrien County Weighmaster or his/her designees.

SECTION 4. ENFORCEMENT

Authority for the enforcement of this Ordinance and any rules and regulations adopted pursuant to this Ordinance shall be vested in the Berrien County Road Commission Weighmaster or his/her designees. All licensed and duly certified law enforcement peace officers in the State of Michigan shall have authority to enforce the provisions of this Ordinance.

SECTION 5. PERMIT PROCEDURE

Any individual, partnership, corporation, association, driver or operator of a motor vehicle, truck tractor, truck or other construction equipment who wishes to perform or engage in construction, operation, use and/or maintenance of a driveway, private road, approach or other such access or activity within the county road rights of way shall obtain and properly complete a permit application. The application form shall be provided by the Board of County Road Commissioners of the County of Berrien. The Berrien County Road Commission may establish applicable permit fees and shall also develop the form and content of the permit application. No work shall be started in the county road rights of way until the applicant has been issued an approved permit by the Berrien County Road Commission. The issuance of a permit shall not relieve the permit holder from meeting any applicable requirements of State law, local ordinances, and State and Federal regulations.

SECTION 6. RULES AND REGULATIONS

The Berrien County Road Commission is hereby authorized to prepare and adopt any and all rules and regulations which are necessary for the implementation of this Ordinance. Said documents shall be maintained at the Berrien County Road Commission and shall be made available to the public during normal business hours.

SECTION 7. APPLICABILITY OF STATE MOTOR CARRIER SAFETY ACT

The rules, regulations and amendments thereto promulgated by the Department of State Police pursuant to the Michigan Motor Carrier Safety Act are incorporated by reference as though fully set forth herein, to the extent applicable to this Ordinance.

SECTION 8. VIOLATIONS GENERALLY

(a) Any driver, operator, contractor, sub-contractor, or individual(s) who fails to obtain a permit pursuant to this Ordinance or who otherwise violates this Ordinance or rules and regulations promulgated pursuant to this Ordinance is subject to the penalty provisions set forth herein.

(b) Any owner, contractor, subcontractor, individual or any officer or agent of any individual, partnership, corporation or association or lessee or receiver appointed by any Court who requires or knowingly permits an individual to operate any truck, tractor or trailer, or piece of construction equipment who fails to obtain a permit pursuant to this Ordinance or who otherwise violates this Ordinance or rules and regulations promulgated pursuant to this Ordinance, is subject to the penalty provisions set forth herein.

(c) The Berrien County Road Commission Weighmaster, his/her designee, or a law enforcement officer may stop, investigate and inspect vehicles and activities within the County rights of way. If a violation is found, the officer may issue notice to appear for that violation.

SECTION 9. SANCTION FOR A VIOLATION

Sanction for a violation shall constitute a civil infraction punishable by an imposition of a civil fine which shall not be more than Two Hundred Fifty Dollars (\$250.00) plus costs for a commercial motor vehicle and shall not be more than One Hundred Dollars (\$100.00) for a non-commercial motor vehicle. Each day or occurrence shall constitute a separate offense. In addition to the sanctions authorized by this Section, any individual or entity authorized to enforce this Ordinance may remove or provide for the removal of vehicles or equipment which have been placed within the right of way of a county road. The costs related to removal as well as any storage expenses shall be borne by the party responsible for placement of the vehicle or equipment within the right of way. For purposes of this Section, "responsible party" shall include the property owner, vehicle or equipment owner and the vehicle or equipment operator.

SECTION 10. PROSECUTION

When any provision of this Ordinance or any rule promulgated under this Ordinance has been violated the offense may be prosecuted in the Fifth District Court or its equivalent,

the Criminal Division of the Berrien County Trial Court. The Berrien County Prosecutor shall prosecute violations of this Ordinance.

SECTION 11. SEVERABILITY

The invalidity of any clause, sentence, paragraph or part of this Ordinance shall not affect the validity of the remaining parts of this Ordinance.

SECTION 12. EFFECTIVE DATE

This Ordinance is declared necessary for the peace, health and safety of Berrien County, State of Michigan, and shall take effect and be in full force from and after fifty (50) days after the date of adoption by the Berrien County Board of Commissioners.

SECTION 13. PUBLICATION

This Ordinance shall be published in a newspaper of general circulation within the County of Berrien, State of Michigan, once before the effective date hereof.

SECTION 14. INCONSISTENT ORDINANCES

All Ordinances or parts of Ordinances inconsistent herewith are repealed.

ADOPTED: October 9, 2003