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STATE OF NEVADA  
COUNTY OF WASHOE

ss: Julia Ketcham

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **10/01/04 - 10/08/04**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: \_\_\_\_\_

**OCT 8 2004**



**Proof of Publication**

NOTICE OF ADOPTION WASHOE COUNTY ORDINANCE NO. 1249 NOTICE IS HEREBY GIVEN THAT: Bill No. 1429, Ordinance No. 1249 entitled AN ORDINANCE AMENDING THE WASHOE COUNTY CODE BY ADDING NEW SECTIONS TO WASHOE COUNTY CODE CHAPTER 85 WITH REGARD TO PUBLIC ROADS; PROVIDING FOR A DECLARATION OF POLICY; APPLICABILITY; DEFINITIONS; A PETITION PROCESS FOR THE DETERMINATION OF A PUBLIC ROAD; NOTICE AND INVESTIGATION BY THE DEPARTMENT OF PUBLIC WORKS; PUBLIC HEARING AND BOARD REQUIRED FINDINGS AND ORDER; LIMITING MAINTENANCE RESPONSIBILITY AND LIABILITY OF COUNTY; DECLARING THE OBSTRUCTION OF A PUBLIC ROAD UNLAWFUL AND A NUISANCE; PROVIDING FOR THE REMOVAL OF OBSTRUCTIONS AND ASSESSMENT OF COSTS OF REMOVAL; LIMITING PUBLIC USE TO PUBLIC ROADS; AND PROVIDING OTHER MATTERS RELATED THERETO. was adopted on September 28, 2004 by a 4 to 1 vote. Commissioners Galloway, Humke, Sferrazza, and Shaw voted for adoption . Commissioner Weber voted against adoption. This ordinance shall be in full force and effect from and after October 8, 2004. Typewritten copies of the ordinance are available for inspection by all interested persons at the office of the County

Clerk, 350 South Center Street, Suite 100, Reno, Nevada.  
Clerk and Clerk of the Board of County Commissioners

AMY HARVEY, Washoe County  
No.525529 Oct 1, 8, 2004

SUMMARY: An ordinance amending Washoe County Code by adding new sections providing for the determination by the board of county commissioners of public roads, declaring the obstruction of a public road unlawful and a nuisance and providing for a process to remove obstructions.

BILL NO. 1429

ORDINANCE NO. 1249

AN ORDINANCE AMENDING THE WASHOE COUNTY CODE BY ADDING NEW SECTIONS TO WASHOE COUNTY CODE CHAPTER 85 WITH REGARD TO PUBLIC ROADS; PROVIDING FOR A DECLARATION OF POLICY; APPLICABILITY; DEFINITONS; A PETITION PROCESS FOR THE DETERMINATION OF A PUBLIC ROAD; NOTICE AND INVESTIGATION BY THE DEPARTMENT OF PUBLIC WORKS; PUBLIC HEARING AND BOARD REQUIRED FINDINGS AND ORDER; LIMITING MAINTENANCE RESPONSIBILITY AND LIABILITY OF COUNTY; DECLARING THE OBSTRUCTION OF A PUBLIC ROAD UNLAWFUL AND A NUISANCE; PROVIDING FOR THE REMOVAL OF OBSTRUCTIONS AND ASSESSMENT OF COSTS OF REMOVAL; LIMITING PUBLIC USE TO PUBLIC ROADS; AND PROVIDING OTHER MATTERS RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE C OUNTY OF WASHOE DO ORDAIN:

SECTION 1. Chapter 85 of the Washoe County Code is hereby amended by adding thereto the provisions set forth as sections 2 through 15, inclusive, of this ordinance.

SECTION 2.

85.450 Declaration of Policy. The board of county commissioners hereby declares that the determination and adjudication of certain presumed public roads and other roads eligible to be public roads is critical to the quality of life of the citizens of the region and necessary to assure continued access by the public to public lands.

SECTION 3.

85.460 Applicability. Sections 2 through 15 herein establish a process for the adjudication of and removal of obstructions from public roads as defined in Section 4.

Section 4.

85.470 Definitions.

1. "Board" means the board of county commissioners.
2. "Department" means the department of public works.
3. "Obstruction" or "obstructed" means actions taken to prevent travel across or along the pathway of any public road, including

but not limited to constructing gates, closing existing gates, signage or any other impediment limiting the public use of the public road.

3. "Presumed public road" means a road that qualifies as a public road under the provisions of NRS 405.191(2) or (3) and an accessory road as defined in NRS 405.201(1), commonly referred to as R.S. \$2477 roads.

4. "Presumed public roads map" means a map adopted by the board of county commissioners on April 27, 1999, as it may be amended from time to time by the processes set forth in sections 5 through 8.

5. "Public road" is a road that qualifies as a presumed public road and that has been determined to be a public road pursuant to the process set out in sections 5 through 8 herein, a road adjudicated public by a court or a road meeting the requirements for NRS 405.191(1) or (3).

#### SECTION 5.

##### 85.480 Petition

1. Five or more residents of the state may petition the board to open, reopen, close, relocate or abandon a public road.

2. The petition must be submitted to the county clerk and the department.

3. The petition must be specific to a particular road or segment thereof and accompanied by:

(a) Proof of the petitioners' residency; and

(b) Maps and documentation sufficient to justify a hearing on the petition.

4. Documentation, as used in this section, may include, but is not limited to, identification of the area of the road by way of township, range and section; proffer of proof that the road was constructed by mechanical means; government land office maps; survey notes; and proof of usage.

#### SECTION 6.

##### 85.490 Notice and investigation.

1. The department shall cause the petition to be placed on the county commissioners agenda for a public hearing on a date not earlier than 30 days, nor later than 45 days, after the petition is submitted and deemed complete by the director.

2. The department shall review the petition and conduct such investigation as in the opinion of the department director allows an independent determination regarding the public or non-public status of the road subject of the petition.

3. The department shall publish notice of time, date and location of the public hearing at least once each week for 2 successive weeks in a newspaper of general circulation in the county.

4. In addition, the department shall give notice of the hearing

in writing, at least 30 days prior to the hearing, to the owners of property, at the address as determined from the assessor's records, over which the road subject of the petition traverses.

#### SECTION 7.

85.500 Public hearing. Upon conclusion of the public hearing, the board shall determine whether the documentation and evidence presented allows the following findings to be made:

(a) Construction of the improvement occurred while the land was un-appropriated, unreserved public land;

(b) The improvement was constructed by mechanical means which made the physical change to the natural area necessary for the customary or usual passage of traffic; and

(c) The right of way was:

(1) Accepted by the state or local government for dedication as a road for public use and thereafter the road was used by the public at large; or

(2) Accepted by use as access to a mining claim or other privately owned property.

(d) As an alternative or in addition to (a), (b) and (c), the road meets the definition of a public road as set out in NRS 405.191(2).

#### SECTION 8.

85.510 Additional required findings and order.

1. If the board determines that a road meets the requirements of section 7, it must address and determine whether the following additional findings can be made:

(a) A public road determination results in a benefit to the general public and does not adversely impact the public health, safety, welfare or recreational opportunities of the public; and

(b) A public road determination does not result in any significant impairment of the environment or natural resources; and

(c) A public road determination does not result in a significant reduction in the value of public or private property; and

(d) All required legal notice of the hearing was provided; and

(e) If applicable, alternate access is available to serve the same interest as the road being closed, relocated or abandoned.

(f) If applicable, the board determines and includes in its written order that alternative access is available to serve the same interest as the road being opened and the property owner agrees to have such alternative access recorded as a public road.

2. The board may continue the matter if it determines there is insufficient information to make an informed decision or if required legal notice has not been provided.

3. If all applicable findings are made, the motion of the board is to be reduced to a written order, to be executed by the Chairman, and returned to the board within 45 days.

4. The written order shall provide for any actions that must be

taken, and the names of the persons or departments responsible, to effectuate the board's decision.

5. If all necessary findings are not made, the department shall, if applicable, remove the presumed public road from the presumed public roads map.

#### SECTION 9.

85.520 Appeal; map amendment; recordation.

1. Any person seeking judicial review or relief from an order of the board made pursuant to section 8 must file an action or proceeding in the Second Judicial District Court within 25 days after the date of filing of the order with the county clerk.

2. If no judicial relief is sought or, if sought and the order of the board upheld, the department shall:

(a) Amend the presumed public roads map to reflect the action of the board; and,

(b) Record the board's order with respect to the property or properties over which the public road traverses.

#### SECTION 10.

85.530 Maintenance; liability.

1. Pursuant to NRS 405.193(1), unless otherwise specified in the board's order, a determination by the board that a road is a public road does not constitute an acceptance of that road by the county or require maintenance of that road by the county.

2. Unless accepted as a county road, no action may be brought against the county for damage suffered by a person solely as a result of the un-maintained condition of a road determined by the board to be public pursuant to section 8.

#### SECTION 11.

85.540 Obstruction of public road; nuisance. Pursuant to NRS 405.230, the board hereby declares that the obstruction of a public road constitutes a nuisance and a public offense punishable as no less than a misdemeanor and, if found guilty, is punishable by way of fine to the extent set forth in NRS 193.155 proportionate to the extent of damage to the section of road, street, alley or highway damaged.

#### SECTION 12.

85.550 Notice to property owner Upon receiving and verifying a complaint or obtaining knowledge of a public road being obstructed, the department shall provide written notice and a demand on the property owner to remove the obstruction within five (5) days after personal notice on the property owner or his agent. In lieu of personal service, notice may also be given by registered or

certified mail and by posting, for a period of 5 days, a copy of the notice on the obstacle or encroachment described in the notice. If the obstruction is not removed within the period of the notice, the department with the assistance of the sheriff shall issue a citation to the owner of the property underlying the obstruction.

SECTION 13.

85.560 Removal and assessment of cost If the obstruction is not removed within the five days after personal service or posting, the department shall remove the obstruction and may, directly or through the office of district attorney, bring an action to recover the expense of removal, including but not limited to investigative costs, attorney's fees, cost and expenses of suit and, in addition thereto, the sum of \$250 for each day the obstacle or encroachment remains after the expiration of 5 days from the service of the notice and demand.

SECTION 14.

85.570 Recognition in development process.

1. Any road identified on the presumed public roads map or otherwise determined to be a public road as defined in NRS 405.191 must be perpetuated, or relocated to provide the same access, in any development proposal processed pursuant to NRS Chapter 278.

SECTION 15.

85.580 Limitation. Nothing in this chapter authorizes any person to trespass on or cause damage to private property outside the main traveled way of a public road.

[Business Impact Note: The Board of County Commissioners hereby finds that this ordinance does not impose a direct and significant economic burden upon a business, nor does it directly restrict the formation, operation or expansion of a business.]

Proposed on the 14<sup>th</sup> day of SEPTEMBER, 2004.

Proposed by Commissioner GALLOWAY.

Passed on the 28<sup>th</sup> day of SEPTEMBER, 2004.

Vote:

Ayes: SHAW, HUMKE, GALLOWAY & SFERRAZZA

Nays: WEBER

Absent: (NONE)

James M. Shaw  
Chairman  
Washoe County Commission

ATTEST:

[Signature]  
County Clerk

This ordinance shall be in force and effect from and after the OCTOBER 8, 2004.