

First Reading: 02/13/2017  
Second Reading: 02/27/2017  
Third Reading: 03/13/2017

## ORDINANCE NO. 674

### **AN ORDINANCE TO AMEND ORDINANCE NO. 616, ROADS, HIGHWAYS AND BRIDGES, AS FOLLOWS: REVISE SECTION 1-20-C. ROAD PAVING PROGRAM.**

#### **Sec. 1-1 Purpose.**

The purpose of this Ordinance is to define the mission, responsibilities and limitations of the Department of Public Works with regard to maintenance and construction of road and drainage infrastructure in Fairfield County.

#### **Sec.1-2 Jurisdiction.**

The provisions of this Ordinance shall apply to all lands within the jurisdiction of Fairfield County, South Carolina, and within the jurisdiction of those municipalities (Towns of Winnsboro and Ridgeway) that agree, through intergovernmental service contracts, to have these provisions administered within their corporate limits.

#### **Sec.1-3 Definitions.**

The following definitions apply to words and terms used in this Ordinance. All other words shall have their customary meanings:

(a) *"C" Construction Program*: A State program by which State gasoline tax revenues are shared with Counties for transportation and road construction activities. The funds involved are commonly referred to as "C" funds and they are used at the discretion of a County Transportation Committee (CTC) appointed by the County's Legislative Delegation pursuant to Section 12-28-2740 of the S.C Code of Laws.

(b) *County*: Fairfield County, South Carolina, its County Council or its administrative staff acting on its behalf.

(c) *County Road Maintenance System*: All those public highways, streets and roads, paved and unpaved, that have been dedicated for public use and accepted by the County as prescribed in this chapter and which have not been accepted for maintenance by any other public entity.

(d) *Driveway*: Any paved or unpaved way located on a single parcel of property and intended for vehicular access from a highway, street or road to one or more residences located on that parcel.

(e) *Common Driveway*: A section of roadway utilized by two or more occupied residences for providing access to a county road, highway or street. The County Public Works Department will only maintain the section of roadway that the two or more occupied residences actually utilize from the county road, highway or street. Any roadway past this area is not the responsibility of the County.

(f) *Easement*: A grant to the general public, a corporation, a specific person or persons or a public entity of the right to use a strip or parcel of land for a specific purpose. Fee simple title to the land remains with the grantor.

(g) *Easement and Right-of-Way Deed*: A legal document by which an easement or right-of-way, as defined herein, is granted by a property owner to the County. This document is executed by the property owner (grantor) and the County and recorded in the office of the Fairfield County Register of Deeds so that the easement or right-of-way becomes a permanent part of the public record and binds the grantor's successors in title to its provisions.

(h) *Highway, Street or Road*: The terms "highway", "street" and "road", as used herein, shall be general terms denoting a public way for the purpose of vehicular travel. The terms shall refer to the entire area within the right-of-way to include roadways, pedestrian facilities, bridges, tunnels, viaducts, drainage structures and all other facilities commonly considered component parts of highways, streets or roads. These terms are used interchangeably herein.

(i) *Prescriptive Easement*: An easement acquired for a specific purpose by long continued enjoyment or usage of property for that purpose. To a certain extent, it resembles title by adverse possession but differs to the extent that the adverse user acquires only an easement and not title. To create an easement by "prescription", the use must have been open, continuous, exclusive and under claim of right for the statutory period, which in South Carolina is twenty (20) years.

(j) *Private Road*: As it is used in this ordinance, a private road refers to a road that is not maintained by any public entity such as the County, the South Carolina Department of Transportation (SCDOT) or a municipality. Depending upon the granting of easements and accepted use, private roads may be used by those other than the property owners.

(k) *Public Road*: A public road refers to a road that is maintained by a public entity. This would include all roads in the County Road Maintenance System. In this case, the public is clearly entitled to use the road.

(l) *Quit-Claim Deed*: A deed of conveyance that is intended to pass any title, interest or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title.

(m) *Right-of-Way*: A strip or parcel of land occupied or intended for occupancy by a street, road, railroad or other special use. Fee simple title may or may not be granted to the agency or entity acquiring the right-of-way, but the property is dedicated exclusively for the intended use and is platted separately and distinct from the adjoining lots or parcels.

#### **Sec. 1-4 Drainage on private property.**

(a) Drainage improvements and/or maintenance will be undertaken by County forces on private property only:

- (1) When the drainage system involved has been designed, approved and constructed in accordance with the County's Stormwater Management, Erosion and Sediment Control Regulations by SCDHEC and accepted by the County, or
- (2) When there is a clear and substantial public interest served in doing so and drainage easements are granted to the County on all of the property involved. For the purpose of this section, a public interest is defined as:
  - a. The correction of a serious health hazard, as designated by county or state health officials, affecting multiple residences and beyond the responsibility of an individual property owner.
  - b. The correction of a malfunction or inadequacy of the drainage system within the right-of-way of a publicly maintained street or road.
  - c. The correction of drainage problems associated with projects constructed by the County.
  - d. The maintenance of the structural integrity of the existing drainage infrastructure of the County.
  - e. The improvement of drainage for the benefit of the community. To benefit the community, drainage improvements must eliminate flooding that directly affects a minimum of four (4) residences and/or businesses situated on individual lots or inundates a public road.

Note: Correction of minor ditch erosion problems on private property will not be considered a substantial public interest.

(b) Easements will be obtained for any existing or proposed drainage facilities on private property before any work is performed thereon by County forces. Easements for maintenance of drainage facilities constructed without the County's approval of plans or inspections will not be accepted unless the property owners hold harmless and release the County from all claims resulting from deficiencies of the facilities.

(c) Except where the County has accepted an easement for maintenance of drainage facilities on private property as provided herein, maintenance is the responsibility of the property owner.

#### **Sec. 1-5. Maintenance of unpaved roads.**

(a) The Department of Public Works shall maintain all unpaved roads of the County which have been dedicated for public use regardless of whether or not the dedication was by law or usage. Those roads determined to have been dedicated shall be considered to be a part of the County Road Maintenance System.

(b) For purposes of ascertaining dedication by usage or by maintenance by the County, all unpaved roads which have been used by the public and/or maintained by the County for a period of twenty (20) years or more shall be deemed dedicated and shall be maintained by the Department of Public Works.

(c) Fairfield County will claim a prescriptive easement for all unpaved roads deemed to be dedicated as public roads by usage. Such easements will be considered as comprising the land actually maintained by the County as part of the road.

(d) Unpaved roads not maintained by the County under the provisions of (a) through (c) above, will be accepted for maintenance only when such maintenance will provide a substantial public benefit. For the purpose of this section, one or more of the following characteristics will constitute "substantial public benefit":

- (1) Provides access to a publicly owned facility, or
- (2) Comprises an integral part of the comprehensive transportation plan adopted by the County's planning agency, or
- (3) Comprises a part of an existing street/road network, and is used by the surrounding community, or
- (4) Provides the principle access to a minimum of three (3) occupied residences situated on individually owned parcels that are lots of record for tax purposes and does not exceed one fifth (1/5) mile in length per residence served.

(e) Only established, passable roads with an unobstructed width of twelve (12) feet for the entire length of the road will be maintained or accepted for county maintenance pursuant to subsection (d) above. Such roads will be maintained only up to a minimum serviceable condition and will not be substantially improved by the County.

(f) Occasionally, the County Transportation Committee, or their successor, may cause an unpaved county-maintained road to be paved. In no case will the county accept for maintenance any paved road with less than an unobstructed paved width of twelve (12) feet for the entire length of the road.

(g) Any road in the County, including those created as a part of a private driveway subdivision pursuant to the County's land development regulations, may be accepted by the County and brought up to paved or unpaved road standards as set forth in this Ordinance; provided that one hundred (100) percent of all property owners within the subdivision agree to same and that all costs incurred by the County to bring the road up to County paved or unpaved standards are paid by the property owners.

(h) The Department of Public Works shall maintain those unpaved roads determined to be dedicated under the provisions of this section. Such maintenance may include, but not be limited to:

- (1) Grading,
- (2) Applying crusher-run or gravel,
- (3) Installing street name and traffic control signs,
- (4) Installing driveways,
- (5) Cutting back overhanging branches,
- (6) Mowing shoulders, and/or
- (7) Drainage improvements,
- (8) Dust Control

**Sec. 1-6. Standards for streets and drainage.**

(a) Except as provided for in Sections 1-4 and 1-5 above, no drainage systems or streets will be accepted for maintenance by the County that have not been designed and constructed in accordance with the standards prescribed herein.

(b) Streets: The minimum acceptable street is paved, and the pavement design will be in accordance with the design standards adopted by the County Engineer. Provided, however, that an exception may be allowed whenever the County Council deems that the variance in design is minimal or of such nature that it will not otherwise pose an undue burden or risk upon the County. Where determined necessary and in the sole discretion of the County Council, the County, with the agreement of those property owners served by such roadway, may consent to accept a roadway with special conditions as to any particular nonconforming aspects with regard to county road standards.

(c) Storm Drainage: Drainage systems will be designed in accordance with the County's Stormwater Management, Erosion and Sediment Control Regulations by SCDHEC and the design standards adopted by the County Engineer.

(d) Specifications: Materials and construction of streets and drainage systems will be in accordance with the applicable sections of the current edition of the Standard Specifications for Highway Construction published by South Carolina Department of Transportation.

(e) Acceptance: County acceptance of new streets and drainage systems shall be accomplished through the acceptance of easement and right-of-way deeds. The County accepts no responsibility for the streets or drainage system until the deeds are executed by both parties and recorded.

(f) Warranty: As a prerequisite to the County's acceptance of new streets and drainage systems, the grantor (or an assigned agent thereof) shall provide the County with a bond in an amount equal to the construction cost, with surety and conditions satisfactory to the County, as a

warranty for a period of three (3) years. The warranty shall pertain to the design and construction of the streets and drainage system in accordance with these standards and their satisfactory performance during the warranty period. The warranty period shall commence with the formal acceptance of the roads by the County. The grantor (or an assigned agent thereof) is not responsible for repairing damage done to the roads subsequent to acceptance that was not a result of design or construction failure. The County may accept a bond in any one of the following forms:

- (1) A surety bond issued by a bonding company licensed to do business in the State of South Carolina, or
- (2) Escrow funds in an account in the name of Fairfield County, or
- (3) An irrevocable letter of credit issued by a responsible financial institution, or
- (4) A cash bond.

(g) Only those streets and drainage systems located in subdivision developments where individually owned lots front directly on the street rights-of-way will be accepted by the County. This will apply to residential, commercial and industrial subdivisions. Streets and drainage systems serving group developments such as shopping centers, apartment complexes, condominiums and mobile home parks will not be accepted for maintenance by Fairfield County.

#### **Sec. 1-7. Easement and/or right-of-way acceptance authority.**

The County Administrator and/or his designee(s) are hereby authorized to accept any easement or deed for rights-of-way, drainage easements, and sewer easements; emergency maintenance easements, dirt road rights-of-way, additional rights-of-way, sewer extension agreements, water line easements and other instruments authorized by the County Code of Ordinances; and is authorized to establish procedures for the acceptance and recording of such instruments.

#### **Sec. 1-8. Driveways.**

Driveway connections from the roadway to the right-of-way line will be provided on County maintained roads by the Department of Public Works, subject to the following limitations:

- (1) Only one driveway connection per residence, and a maximum of two per individual parcel of property, will be provided by the County. The Public Works Department will not install additional driveway connections.
- (2) Apron finish will match the finish of the County road to which it is attached.
- (3) A maximum of twenty-four (24) feet of pipe, not exceeding eighteen (18) inches in diameter, will be provided by the County. Larger diameter pipe may be installed by the Public

Works Department provided the property owner pays the additional costs incurred for materials.

(4) Pipe diameter larger than eighteen (18) inches will require approval by the County Engineer.

**Sec. 1-9. Surplus dirt.**

Surplus dirt excavated on County projects, which must be hauled away and disposed of off-site, may be placed on private property, with the property owner's consent, provided that:

(1) Disposal there is more economical than hauling the dirt to the nearest County owned disposal site, and

(2) The property owner releases and holds the County harmless for any damages or liability resulting from placement of the dirt on his property, and

(3) All applicable permitting requirements by the County or SCDHEC have been or will be met.

(4) A reasonable effort is made to insure a fair and equitable distribution among property owners who want the dirt.

**Sec. 1-10. Street name signs.**

(a) The Department of Public Works shall erect and maintain street name signs on all public streets within the jurisdiction and authority of the County. Signs will be metal blanks on metal posts fabricated in a standard design established by the County Administrator and/or his designee(s).

(b) The developer of any new subdivision constructed within the jurisdiction and authority of the County is responsible for the initial installation of street name signs in accordance with an approved signage plan. All street signs shall comply with the County's design standard for retro-reflectivity.

(c) The Department of Public Works may erect street name signs at the intersections of private streets with public streets, at no cost to the residents, when there are residences with addresses on that private street.

(d) Overhead signs may be installed at selected intersections at the discretion of the County Administrator and/or his designee(s).

(e) In conjunction with subsection (a) above, the County standard for street name signs shall be included in published road design standards developed by the County Engineer. The standard shall address sign material, installation, visibility, and color. The Department of Public Works shall maintain street name signs to the County standard after acceptance of the streets.

**Sec. 1-11. Traffic engineering.**

(a) Traffic engineering on County maintained highways, streets and roads shall be in accordance with the South Carolina Manual on Uniform Traffic Control Devices latest edition.

(b) Traffic control signs on County maintained highways, streets and roads shall comply with the standards contained in the South Carolina Manual on Uniform Traffic Control Devices latest addition.

(c) The developer of any new subdivision constructed within the jurisdiction and authority of the County is responsible for the initial installation of all necessary traffic control signs in accordance with an approved signage plan. The Department of Public Works shall maintain the signs after acceptance of the streets.

(d) The use of speed bumps, humps or tables to control speeds on County maintained highways, streets or roads shall have the pavement markings and signage as outlined in the South Carolina Manual on Uniform Traffic Control Devices latest edition.

**Sec. 1-12. Street lighting.**

The County shall not provide street lighting on any highway, street or road until such time as sufficient funds are appropriated to provide that service county-wide. Homeowners or homeowner's associations may obtain street lighting through contractual arrangements with the electric utility serving their area.

**Sec. 1-13. Emergency maintenance of roads.**

(a) No work may be performed on any roadway not already maintained by the County unless the County Administrator and/or his designee(s) determines that access to such roadway is necessary for the performance of one (1) or more public functions, and the following conditions exist:

- (1) Such a roadway is the only access for one (1) or more property owners or residences, and
- (2) Emergency medical services, sheriff department vehicles, and other county vehicles cannot, in the lawful performance of their duties, gain full and immediate access to at least one (1) residence unless road scraping is performed, and
- (3) At least one (1) of the properties to be accessed is used as a primary residence.

(b) Any work pursuant to this Section will be done on a one-time basis only. In such cases, the County Department of Public Works is limited to the minimum improvements that will allow full and immediate access to the affected residences. Crusher-run, gravel, pipe or other materials will not be routinely provided.



(c) This Section is not applicable to roads providing access to private driveway subdivisions that were created under the County's land development regulations.

**Sec. 1-14. Abandonment of public roads and right-of-ways.**

(a) Any person or organization wishing to close an existing public street, road, or highway in Fairfield County to public traffic shall petition a court of competent jurisdiction in accordance with Section 57-9-10, et seq. of the South Carolina Code of Laws, The petition shall name Fairfield County as a respondent (unless the County is the petitioner). The County Attorney shall advise the court with regard to the County's concurrence or opposition after consultation with the County's planning, public works, and emergency services departments, and after consideration by County Council. It shall be the responsibility of the petitioner to physically close the roadway if a petition is successful. The County Attorney may submit such petition on behalf of Fairfield County if so directed by County Council.

(b) Any person or organization wishing the County to abandon maintenance on an existing County-maintained street, road, or highway shall submit to the Public Works Department a petition to do so signed by the owners of all property adjoining the road and by the owners of all property who use the road as their only means of ingress/egress to their property. The petition shall state that the property owners release and indemnify the County from any duty to maintain the road. At the recommendation of the County Engineer, the County Administrator shall have the authority to act on a petition that involves a dead-end road; County Council shall have the authority to approve petitions under all other circumstances. If the petition is approved, the County Engineer may require the property owners to place an appropriate sign alongside or at the end of the road.

(c) Any person or organization wishing to acquire ownership of an unused road right-of-way in the County (including a public right-of-way that is dedicated either by deed, prescription, or recordation of a plat) may submit a petition for consideration by County Council. If it is determined by the County's planning department and public works department that the right-of-way will not be utilized by the County for road purposes, County Council may approve a quit-claim deed conveying the County's interest to the owners of the adjoining property. Unless the owners of the adjoining property agree to another division, each may acquire that portion of the right-of-way adjacent to his/her property on his/her side of the right-of-way's centerline. The grantee(s) of the quit-claim deed(s) shall be responsible for preparing the deed(s) prior to County Council's consideration of the request. Upon approval and execution of the deed(s), the grantee(s) shall be responsible for recording the deed(s) in the office of the Register of Deeds and for returning a filed copy to the office of the County Attorney. The County Council may require the grantee(s) to pay up to the fair market value, as determined by the County Assessor's Office, in exchange for the conveyance of the right-of-way. Upon recordation of the deed, the County Assessor's Office shall adjust the appraisal of the adjoining parcels to reflect the value of the additional property.

**Sec. 1-15. Temporary closing of streets and roads.**

(a) Request. Any party desiring to have any street or road temporarily closed in the County shall submit a written request to the County Administrator.

(b) Deadlines for requests. All written requests must be submitted to the County Administrator at least ten (10) days prior to the requested closing date.

(c) Appointment of person accountable. All parties requesting such temporary closure shall designate one (1) person who shall act as spokesman for the party, as well as supervise all activities for the duration of such closing.

(d) County Administrator consideration. The County Administrator shall consider, within five (5) days, all timely submitted requests made by such parties. If approved, the County Administrator shall request the Sheriff to take appropriate action to blockade the requested streets and/or roads and the Clerk of Council shall advertise to the public through the news media all approved temporary closings. The cost of such advertising shall be borne by the parties requesting the temporary closures,

(e) Duration. All streets and roads closed pursuant to this Section shall be blockaded for a period normally not to exceed twenty-four (24) hours. Such duration, however, may be amended by the County Administrator at his/her discretion on an event basis.

(f) Emergency closings. Requests for temporary closing received less than ten (10) days prior to the requested closing date may be considered as an emergency closing if, in the opinion of the County Administrator, such closing is warranted; provided, that such action would not conflict with the public interest and, further, that there exists sufficient time for appropriate action to blockade requested streets and/or roads. All applicants will be placed on notice that future requests must be submitted to the County Administrator ten (10) days prior to the requested closing date.

**Sec. 1-16. Work on private property.**

The County Department of Public Works is prohibited from performing any work on private property not specifically authorized under the provisions of this Section except in emergency situations involving public health or safety and authorized, in writing, by the County Administrator.

**Sec. 1-17. Construction of new roads.**

No new roads will be constructed by the County Department of Public Works unless specifically directed by the County Council.

**Sec. 1-18. Trees on private property.**

The County Department of Public Works may remove dead trees on private property when there is a clear danger that they will fall onto a public road.

**Sec. 1-19. "C" construction program.**

(a) All funds available to the County Council through the "C" construction program will be used exclusively for maintenance and construction of publicly owned streets and roads in the county, and the drainage facilities directly related thereto.

(b) The County Administrator and/or his designee(s) will be responsible for implementing systematic programs for resurfacing of existing streets and new construction funded with "C" funds. New construction may include any of the following:

- (1) Paving existing unpaved roads,
- (2) Widening existing roads,
- (3) Intersection improvements,
- (4) Transportation Improvement Projects (including traffic signal devices),
- (5) Traffic Safety Projects,
- (6) Drainage Improvements (including drainage basins, curb and gutter, etc.), or
- (7) Sidewalks.

(c) The County Administrator and/or his designee(s) may provide staff support to the County Transportation Committee as requested for coordination of the "C" Construction Program for Fairfield County.

(d) The County Finance Department or their consultant may provide all financial services required for administration of the County's "C" fund allocation if requested by the County Transportation Committee.

(e) Fairfield County Council has the right to supersede the funding for the road priority program as described in Sec. 1-20 for economical development priorities and other special circumstances including but not limited to new industries, schools and or subdivisions.

(f) In the event of funding shortfalls, the County Administrator and/or his designee(s), County Council and the County Transportation Committee will evaluate the priority system and determine which projects to complete.

(g) The County Transportation Committee and/or their designee shall update the road

priority list every three (3) years.

- (h) The priority list dated September 2012 provided by the County Transportation Committee shall be included in this ordinance for the original road priority list "Attachment A.",

**Sec. 1-20. Road paving program.**

(a) Road construction and paving projects administered by the County and funded from "C" funds shall be accomplished in accordance with a consistent, systematic program established and administered by the County Administrator and/or his designee(s). Such program shall have the following basic characteristics:

- (1) Only County maintained roads will be paved utilizing public funds,
- (2) All County maintained dirt roads are eligible for paving providing the county standards are met, and
- (3) Paving will be accomplished in priority order at a rate permitted by availability of funding.

(b) The County Administrator and/or his designee(s) will acquire and maintain the following data on all roads proposed for paving, and post this information in the Fairfield County Library:

- (1) Name,
- (2) Beginning and ending points,
- (3) Length in miles and hundredths of a mile, and
- (4) Council District.

(c) In addition, the following data pertaining to the roads priority for paving will be obtained and recorded for each road:

- (1) Number of permanent type resident's homes accessed from the road, and
- (2) Number of Churches accessed from the road.

For the purpose of determining the number of homes and churches accessed from a road, only those on parcels with no existing paved road frontage will be counted.

Any road that becomes eligible for paving, based on the priority points formula, that begins on an unpaved County road, the unpaved County road will be paved as part of the eligible road.

(d) Roads will be prioritized in accordance with the following procedure:

A road's priority for paving will be established by the number of points accredited to it as described below with the highest total of points constituting the highest priority. The priority factor (P) is calculated by the formula:

$$P=R+C+T+D$$

P=Priority Points

R=Number of residences at 2 points each. (Residence is defined as a permanent house or fixed mobile home. A residence does not include travel trailers, RVs, etc.).

C=Churches at 2 points each (Entrance must be on the roadway).

T=Thruway at 5 points each. (The definition of a thruway is defined as a short cut between 2 roads or a short cut on the same road, not a circle road or loop road).

D=Number of residences per mile (length of road in feet divided by 5280 then divide result into number of residences on road. Example:

A road is 1000 feet long and has 5 residences

1000 divided by 5280 = .189 miles

5 residences divided by 0.189 = 26.46

D = 26.46 Points

Roads located in two districts will be considered in the district in which the road begins. In all cases where the road ties into other roads on both ends, the beginning point will be the tie-in at the northern or eastern most point. The ending point is the opposite end. If the road is a dead end, the beginning point will be the tie-in to another road.

On County roads with a common driveway, residences on the common driveway will be included in the count of the primary road since the common driveway is not eligible for paving.

County maintained feeder roads less than 1,000 feet with residences will be considered as part of the primary road and both roads will be surfaced as one project. County maintained feeder roads greater than 1,000 feet will not be combined with the primary road and will be considered a separate project. (A feeder road is defined as a secondary road used to bring traffic to a primary road).

(e) Highways, streets or roads constructed or paved under the County's jurisdiction and maintained by Fairfield County shall meet the design and construction standards contained in Section 1-6, above.

(f) The County Administrator and/or his designee(s) shall, within the best judgment of the engineering staff, establish appropriate alternate design and construction standards for low volume rural roads as a means of ensuring maximum cost effectiveness of road paving funds.

(g) Road paving "C" funds will be distributed by the County Transportation Committee in conjunction with County Council.

(h) The order of roads to be selected for paving shall meet the following criteria:

- (1) One per district,
- (2) Based on worst to best by priority list,
- (3) Availability of funds.

**Sec.1-21. Transportation Improvement Program.**

All public funds available to Fairfield County for transportation system improvements shall be expended in accordance with a comprehensive transportation improvement plan. This would apply to:

- (a) Connector roads,
- (b) Intersection improvements,
- (c) Widening,
- (d) Turn lanes, and
- (e) Alignment improvements.

**Sec. 1-22. Sidewalks.**

Public funds may be used by the County for construction of sidewalks. The County Administrator and/or his designee(s) shall be responsible for establishing a systematic program for identifying, prioritizing, and implementing sidewalk construction projects. The principal focus for such program will be the safety of children walking to school, to school bus stops, or to neighborhood/public recreation facilities.

**Sec. 1-23. Condemnation/compensation.**

(a) In general, Fairfield County will not compensate property owners for easements or rights-of-way on public works projects from which they directly benefit. Exceptions may be made, however, when:

- (1) Unusual circumstances make payment of a reasonable amount of compensation more economical than resorting to condemnation,
- (2) Deadlines for completion of a project preclude the expenditure of time required for condemnation, or
- (3) Compensation is awarded through the condemnation process.

(b) Condemnation of easements or rights-of-way on any County public works project shall require the prior approval of the County Council. An appraisal of affected property parcels shall accompany a staff recommendation to County Council for condemnation of property.

**Sec. 1-24. Encroachments on county maintained roads.**

(a) Generally,

- (1) An encroachment permit, approved by the County Engineer's office, shall be required for all construction, undertaken by parties other than the Fairfield County Public Works Department or its authorized contractor, within or affecting the right-of-way of any County maintained highway, street or road. This requirement shall apply, but not be limited, to:
  - a. Driveway connections involving a curb cut or pipe installation,
  - b. Curb cuts,
  - c. Utility taps,
  - d. Utility installations,
  - e. Excavations within rights-of-way,
  - f. Storm drainage installation,

- g. Storm drainage discharge, and
  - h. Subdivision entrance signs or gateways.
- (2) The permittee shall indemnify the County for any liability incurred or damages sustained as a result of the encroachment.
- (3) The permittee shall be responsible for:
- a. Notifying the County Engineer's office when construction begins on an encroachment,
  - b. Ensuring that a copy of the encroachment permit is on the construction site, and
  - c. Ensuring that the construction and the restoration of the roadway have been approved by the County Engineer's office.

(b) Excavations in streets.

- (1) An encroachment permit shall be required for each excavation in a County road before the work is commenced. Work under such permit shall be commenced within the time specified on the permit; otherwise the permit shall become void. All permits shall be kept at the place of excavation while the work is being done and exhibited whenever called for by any person having the authority to examine the same. There shall be no more than one-half (1/2) the width of any street or alley opened or obstructed at any one time; tunneling may be allowed, provided that no authorized underground construction shall be damaged or interfered with. All portions of the street excavated shall be put in as good condition as before the excavation was made. The trench or excavation shall be refilled, thoroughly rammed and compacted within the time specified on the permit after making the connection or repairs. When an excavation is made in any paved County road where it is necessary to remove paving, the person to whom the permit was issued for such excavation shall leave a written notice with the County Department of Public Works and such notice shall state that the excavation has been properly filled, tamped, and is ready for repaving. Whenever any person making any excavations in the street or alley fails to refill, in the proper manner, as required by this Section or fails to maintain the same for a period of one (1) year, then the County Council shall cause the work to be done and the cost thereof shall be charged against the bond.
- (2) Where such excavations occur in a state or federal highway, permission shall be obtained from the state or federal highway department before any work is commenced.
- (3) Public protection requirement.



- a. It is hereby required that for every excavation made on public property, proper safeguards shall be provided against injury to the public; barricades shall be provided at five (5) foot distances, and such barricades shall completely encircle all open excavations or trenches. All barricades, as required by this Section, shall have at least one sign placed thereon in a conspicuous manner, indicating the name of the person causing such excavation. When approved, steel plates of sufficient strength may be used to cover excavation to prevent blocking of street.
- b. From sunup to sundown there shall be placed, at a distance of not less than one hundred (100) feet, sufficient numbers of reflective traffic barrels to warn the public of dangerous excavation. From sunset to sunrise there shall be placed, at a distance of not less than one hundred (100) feet, sufficient reflective traffic barrels or reflective four (4) foot cones to indicate the length of the excavation in the public thoroughfare and to warn the public of dangerous excavation.
- (c) Anyone who encroaches on the right-of-way of a County maintained highway, street or road without securing an encroachment permit or who fails to adequately restore the road and right-of-way after an encroachment shall be deemed guilty of a misdemeanor, and shall be subject to the general penalty provisions of this Code. Each day that the unauthorized encroachment exists, or that the inadequacy exists following notification, shall be considered a separate offense.

## **EASEMENTS ON PUBLIC STREETS**

### **Sec. 1-34. Easements on, over, under and across public streets and property.**

- (a) Generally,
  - (1) Easements over, under and across public streets and property controlled by the County shall be granted only for a public purpose, convenience, necessity, or to facilitate the provision of water, sewer, electricity, transportation or other utility.
  - (2) The grantee of such easement shall certify the purpose of such easement, the area affected, the necessity and the fact that the area affected does or does not receive similar services from another public or private utility.
  - (3) Prior to the granting of such easement, the grantee shall provide a written assurance that he, she, or it will comply with all applicable local, state and federal laws and regulations including, but not limited to, public safety, job safety, wage and hour laws, health standards and such other requirements as are necessary to ensure the public's safety at any time, during construction, repairs, or otherwise, should injury to person or property occur as a result of acts and/or omissions to act by such grantee, his, her, or its heirs, executor, successors or assigns.

- (4) Prior to any construction, installation, erection or repair of any such improvements and appurtenances on, over, under or across such streets or property as may be authorized by such easement, the grantee shall notify the County Department of Public Works, the County Sheriff's Department and the County Administrator at least forty-eight (48) hours in advance.
- (5) The grantee shall provide the County Administrator and/or his designee(s) or his designee with certificate(s) of insurance verifying the grantee currently has the insurance required by the County. All such insurance policies shall be issued by an insurer satisfactory to the County, and the insurer shall have a rating in the A categories of Best Insurance Reports. The certificate(s) shall include a provision that not less than 30 days' notice will be given to the County prior to cancellation, termination or reduction in coverage. In addition, the grantee shall also provide such prior notice to the County Administrator and/or his designee(s). The term of all insurance shall be not less than any time the grantee or anyone with a contract to perform work on the grantee's projects shall be performing such work. Insurance shall consist of the following:
  - a. At its expense the grantee shall for the term required by the County maintain a commercial general liability policy for bodily injury, personal injury, completed operations and property damage in a coverage amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and a business auto policy for bodily injury and property damage in a coverage amount of not less than \$1,000,000 per occurrence. The forms shall be ISO (Insurance Services Office, Inc.) or comparable to them. Fairfield County Government shall be named an additional insured, except when the grantee is a governmental entity. Grantee shall provide its insurer a copy of any agreement with or requirement by the grantee regarding insurance.
  - b. At its expense the grantee shall for the term required by the County maintain the workers' compensation coverage required by S.C. law. The grantee shall provide a certificate for insurance for this coverage in the manner required by this subsection (5).
- (6) The grantee shall indemnify and hold harmless the County, its successors and assigns, from and against all loss, costs, expenses, including attorneys' fees, claims, suits and judgments whatsoever in connection with injury to or death of any person or persons or loss of or damage to property, and further claims, suits and judgments whatsoever in connection with injury to or death of any person or persons or loss of or damage to property, and further claims, suits and judgments whatsoever by third parties resulting from the interruption of traffic caused by or in any way connected with the construction, installation, erection, repair or maintenance, use or presence of any such improvements or appurtenances, however caused.

- (7) The grantee shall bear all costs of furnishing flagging protection, warning devices and inspection services, as well as the costs of restoring the affected area to its original condition.

(b) Fees, charges or water rents.

- (1) In consideration for the granting of such easements by the County, the grantee shall pay to the County such fees, charges, or portions of fees and water rents as shall be from time to time established by the County Council.
- (2) Initial fees, charges, water rents or portions thereof shall be those as are in force and effect at the time the easement is granted and shall be remitted to the County Finance Department on a monthly basis.
- (3) Prior to any increase in fees, charges or water rents, at least thirty (30) days' notice prior to the effective date shall be given to those grantees so affected.
- (4) Any grantee affected by any such increase may request a hearing by County Council or its duly authorized representative, provided such hearing is requested in writing within twenty (20) days of the giving of notice as required in subsection (b)(3) of this Section.
- (5) Such request for hearing shall stay the implementation of such increase for an additional fifteen (15) days beyond the thirty-day notice period, but thereafter such increase shall go into effect and so continue until such time as changed by County Council, general law, or a court of competent jurisdiction.
- (6) Such increase as is collected subsequent to such request for hearing shall be placed in escrow pending a ruling by County Council. In the event of a reduction of the increase, such difference shall be refunded to the grantee.
- (7) Only that increase collected from a grantee that has requested a hearing shall be so escrowed. Increases collected from grantees that do not request a hearing will not be escrowed.
- (8) In the event County Council, after hearing, refuses to reduce the increase, the funds so escrowed shall immediately revert to the general fund or such other fund as has been designated by County Council.
- (9) In the event the hearing provided for in subsection (b) (4) of this Section is held by the duly authorized representative of County Council, the representative shall report his/her findings and recommendations to County Council within ten (10) working days thereafter.
- (10) The failure of County Council to affirmatively reduce the increase by the second meeting after a receipt of such report shall constitute a ratification of its previous action establishing such increase.

**Sec.1-35. Adoption not to constitute waiver.**

(a) The adoption of this chapter shall not be deemed an acceptance of liability nor a waiver of the doctrine of sovereign immunity.


(b) The adoption of this chapter shall not be deemed a waiver of the release clause contained in the standard easement and right-of-way deed.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.


SECTION III. Conflicting Ordinances Repealed. This ordinance replaces ordinance number 616 in its entirety, and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.


SECTION IV. Effective Date. This ordinance shall go into effect upon its adoption by the Fairfield County Council.

ADOPTED THIS 13<sup>th</sup> DAY OF March, 2017 BY ORDER OF THE FAIRFIELD COUNTY COUNCIL.


  
\_\_\_\_\_  
William B. Smith, Jr., Chairman

  
\_\_\_\_\_  
Bertha Goins, Vice-Chair

  
\_\_\_\_\_  
Daniel W. Ruff, III, Member

  
\_\_\_\_\_  
Jimmy Ray Douglas, Member

  
\_\_\_\_\_  
Mikel Trapp, Member

  
\_\_\_\_\_  
Cornelius Robinson, Member

ATTEST:

  
\_\_\_\_\_  
Patti Locklair, Clerk to Council