

CHAPTER 38
UNAUTHORIZED USE OF SECONDARY ROAD RIGHT-OF-WAY

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38.01 PURPOSE. The purpose of this chapter shall be to prevent the unauthorized use of the County’s secondary roadway right-of-way.

38.02 DEFINITIONS. For purposes of this chapter, the following terms are defined.

1. “Any persons responsible” means any person who personally does any act, which constitutes the unauthorized use of the County secondary roadway right-of-way. Any persons responsible shall include any person who authorizes or contracts with another to do any act, which leads to the unauthorized use of the County secondary roadway right-of-way. It is not a defense to this chapter that a person contracted with another person or entity and that the contractor did the act, which constituted the unauthorized use of the County secondary roadway right-of-way. A person contracting with another shall have an ongoing duty not to permit the contractor to do work which involves the unauthorized use of the County secondary roadway right-of-way and to oversee the work done in order to ensure that it does not involve the unauthorized use of the County secondary roadway right-of-way.
 - A. Evidence that work done on or to benefit a piece of property involved the unauthorized use of the County secondary roadway right-of-way shall be prima facie evidence that the owner or lessee of that property did authorize or permit the unauthorized use of the County secondary roadway right-of-way.
 - B. A landlord and tenant shall both be in violation of this chapter if the unauthorized use of the County secondary roadway right-of-way was done with the knowledge, consent, approval, or encouragement of the landlord. It shall be an “Affirmative Defense” to action under this chapter if the unauthorized use of the County secondary roadway right-of-way was done solely by the authority of the tenant without any knowledge, approval, consent, or encouragement by the landlord. A tenant has an independent duty not to violate this chapter. It is not a defense under this chapter for the tenant that the unauthorized use of the County secondary roadway right-of-way was done with the knowledge, approval, consent, or encouragement of the landlord unless the tenant played no part, directly or indirectly, in the action constituting the unauthorized use of the County secondary roadway right-of-way.
2. “County secondary roadway right-of-way” means the entire width, distance, and portion of any property that the County has the right to use, whether by easement or fee, for roadway purposes. County secondary roadway right-of-way includes the traveled portion of the roadway, the shoulders and the ditches and embankments, including both fore slopes and back slopes, attached to any County secondary road that are used for roadway purposes. Width of these properties varies and have been removed from taxation due to their public usage.
3. “Unauthorized use of the County secondary roadway right-of-way” means any use of the County secondary roadway right-of-way that is not pre-authorized in writing by the County Engineer and that occurs after the effective date of this chapter. It includes, but is not limited to, excavating, filling, or making any physical changes to any part of the County secondary roadway right-of-way; the cultivation and growing of crops on the County right-of-way; the destruction of plants placed in the County right-of-way; the placing of fences or ditches on the County right-of-way; the alteration of ditches, water breaks, and drainage tiles on the County right-of-way; the placement of trash, junk, rocks, corn cobs,

brush, vehicles, machinery, or other items on or in the County right-of-way; and the placement of billboards, signs, hazardous mailbox supports, and advertising devices on the County right-of-way.

- A. Unauthorized use of the County secondary roadway right-of-way does not include the mowing or harvesting of grasses in the County right-of-way so long as the mowing or harvesting of grasses does not destroy or adversely affect the grasses or other plants in the County right-of-way or is not in violation of an integrated roadside vegetation management plan promulgated pursuant to Section 314.22(2) of the Code of Iowa.
- B. Secondary roadway right-of-way does not include driving on the traveled portion of the roadway or parking a vehicle on the shoulder of the roadway for less than two hours or parking a disabled vehicle on the shoulder of the roadway for less than 24 hours.
- C. Unauthorized use of the County secondary roadway right-of-way does not include the actions of the County Engineer or any agency of the County or the State.

38.03 AUTHORIZATION PROCESS.

- 1. No action shall be a violation of this chapter if done with the written pre-authorization of the County Engineer.
- 2. Written pre-authorization shall be in the form of a permit, which shall be issued at no charge.
- 3. The County Engineer may set forth conditions, limitations, or specifications in the permit and may require the posting of a bond.
- 4. A permittee under this section may, when appropriate, seek a modification of the permit. The granting of the modification shall be at the discretion of the County Engineer.
- 5. A violation of the conditions, limitations, or specifications in the permit shall be considered the unauthorized use of the County secondary roadway right-of-way and a violation of this chapter.
- 6. Upon the violation of the conditions, limitations, or specifications of a permit, the County Engineer may, at their discretion:
 - A. Modify the permit.
 - B. Give the permitted notice of the violation and an opportunity, as set out in the notice, to cure the violation by a specified removal deadline.
 - C. Take steps to cure the violation and to assess the costs of the cure to the permitted.
 - D. Refer the matter to the County Attorney for legal action.
 - E. Take other appropriate action.
- 7. The Board of Supervisors may, at its discretion, by majority vote, waive any violation of this chapter that has not been referred to the County Attorney for legal action.

38.04 ABATEMENT COST. Any persons responsible for the unauthorized use of the County secondary roadway right-of-way shall be strictly liable and responsible for the abatement and the costs of the abatement of the unauthorized use of the County secondary roadway right-of-way and for any damages caused by the unauthorized use of the County secondary roadway right-of-way. The County’s costs for abatement or correction of the violation may be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

(Code of Iowa, Sec. 331.307(a)(5))

38.05 PENALTY. Anyone violating this chapter shall be subject to the provisions of Chapter

- 3. Each 24 hour period following the removal deadline specified in Section 38.03(6)(B) that a person is in violation of this chapter is a separate and distinct offense.

38.06 ENFORCEMENT. It shall be the duty of the County Engineer to identify violations of this chapter. Upon the request of the County Engineer, the County Attorney shall take those steps that they deem appropriate to enforce this chapter.