

**ROAD SAFETY AND MAINTENANCE ORDINANCE**

**FOR**

**BERTIE COUNTY, NORTH CAROLINA**

**February 18, 2019**

**ARTICLE I  
INTRODUCTORY PROVISIONS**

**Section 101 Title**

This Ordinance is entitled the *Bertie County Road Safety and Maintenance Ordinance*, and may be cited as the *Road Safety and Maintenance Ordinance*.

**Section 102 Authority & Purpose**

Bertie County being granted the authority under N.C.G.S. §153A-340 *et. seq.* and all other relevant North Carolina General Statutes, and, whereas, in order to promote the health, safety, and general welfare of the citizens of Bertie County, North Carolina; to allow for and provide for safe and timely emergency services to those citizens of Bertie County; and to abate and repair any deterrence to these services because of the conditions of any roadways which have been deemed to be detrimental to the public health, safety, and general welfare of a citizen of this county and said conditions have been determined to be a "public nuisance" and/or "safety hazard"; it is desirable and necessary to adopt the *Road Safety and Maintenance Ordinance*, for the territorial jurisdiction of Bertie County as herein set forth.

**Section 103 Jurisdiction**

Upon adoption, this ordinance shall govern every private and public road not maintained by the North Carolina Department of Transportation within Bertie County, North Carolina, where said road provides for public or private access to, at a minimum, two residences or dwellings which are used for residential purposes.

**ARTICLE II  
DEFINITIONS**

**Section 201 General**

For the purpose of this ordinance, certain terms or words used herein shall be interpreted as set forth herein:

**Section 202 Words Interpretation**

For the purpose of this Ordinance, certain words shall be interpreted as follows:

- a) The word "may" is permissive
- b) The words "shall" and "will" are mandatory
- c) The present tense includes the future tense and the future tense includes the present tense.
- d) The singular includes the plural and plural includes the singular.
- e) The word "county" shall mean Bertie County, North Carolina
- f) The words "County Commissioners" shall mean the Bertie County Board of Commissioners.
- g) The word "person" includes firm, association, organization; trust, company, corporation, or any legal entity as well as an individual.
- h) The words "used" or "occupied" include the phrases: "intended to be occupied or used".

## **Section 203        Definitions**

**Dwelling-** For the purpose of this Ordinance a dwelling, means any building, structure, manufactured home or mobile home, occupied, maintained or intended for use as a residence.

**Enforcement Officer-** The enforcement officers for Bertie County shall be the Emergency Management Services Director and Sheriff of Bertie County. Each is vested with the powers and authority granted under Article III of this Ordinance.

**Private Road-** A road or street that has not been accepted nor planned for acceptance by North Carolina Department of Transportation or other governmental entity, and which provides vehicular access to residential areas containing a minimum of two dwellings. A Private Road shall not include a private driveway providing ingress and egress to a single private residence.

**Owner-** The legal owner of the parcel or real property upon which any part of the private road is situated as documented in the Bertie County Tax Office. An owner will only be responsible pursuant to Article III of this ordinance for that portion or section of the private road which is found within the boundary of their parcel as defined by the Bertie County Tax and Mapping Department.

**Residence-** A place where a person or group of persons resides on a permanent or temporary basis.

**Extreme Weather Conditions-** For the purpose of this statute extreme weather conditions are those meteorological conditions which result in excessive precipitation, including ice, rain, or snow, that would make an otherwise passable private road unpassable; or a meteorological condition resulting in damage which causes a private road to not be passable. In the event said road is damaged as a result of said extreme

weather the owner shall have the same time allotted in Article IV Section 501 to repair said damage and bring said private road in compliance with this ordinance.

**Obstacle:** Any natural or manmade impediment or debris acting as a hindrance to vehicular travel on a road or street.

**Vehicles:** Two or Four Wheel drive vehicles owned and operated by law enforcement, emergency management services or any fire department which are used in the execution of public services.

### **ARTICLE III SPECIFICATIONS FOR PRIVATE ROADS**

#### **Section 301      General Provisions**

Any Private Road within the jurisdiction of this ordinance will be subject to the specifications set forth within this article.

#### **Section 302      Specifications**

(a) All Private Roads must be passable for all vehicles defined in Article II Section 203.

(b) The Private Road must be passable. "Passable" is defined as being clear of obstacles and capable of being traveled upon safely. Travel will be deemed safe when said private road is devoid of any and all holes, cracks, crevices, potholes or other breaks in the road which cause the bottom chassis of the vehicle to come into contact with the ground or water during non-extreme weather conditions.

(c) The determination of what constitutes "passable" will be determined by the Enforcement Officer based upon the specifications contained herein.

#### **Section 303      Exceptions**

The specifications set forth in this ordinance do not apply during extreme weather conditions, or to situations where a private road becomes unpassable based upon extreme weather conditions.

#### **Section 304      Maintenance**

The owner of said Private Roads shall have a specific duty to maintain, repair, and bring up to standard, all private roads within the jurisdiction of this ordinance. Any and all private roads subject to this ordinance shall be subject to inspection by the Enforcement Officer to ensure compliance with the specification set forth in Article III, Section 302 above.

**Section 305 Compliance**

Any current owner of a private road subject to this Ordinance shall have 45 days to come into compliance with said Ordinance when served with a notice of violation. This notice of violation shall be served upon the land owner by the Bertie County Sheriff's Department. All new private roads subject to this Ordinance shall be built in compliance with the Specifications set forth in Article III, Section 302 above.

**ARTICLE IV  
APPEAL**

**Section 401 Notice of Appeal**

Any current owner cited with a violation of said ordinance pursuant to this order, shall have ten (10) days upon service of notice of violation to file written notice of appeal with the County Clerk.

**Section 402 Process of Appeal**

- (a) If any owner or occupant makes a written request to the Board of Commissioners for hearing, such hearing shall be held before the Bertie County Board of Commissioners.
- (b) The hearing shall be held at the next available meeting after the request for a hearing was received.
- (c) The County shall mail a notice to the appealing party of the time and place of the hearing at least 10 calendar days prior to the hearing.
- (d) All parties shall have full opportunity to respond to and present evidence and witnesses.
- (e) The appellant shall have the burden of proving its position by clear and convincing evidence.
- (f) Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.
- (g) The hearing shall be recorded, and the minutes of the meeting shall be approved by the Board of Commissioners at their next scheduled meeting.
- (h) The decision of the Board of Commissioners shall be issued within 10 calendar days following the hearing. Unless otherwise provided by law, the decision of the Board of Commissioners shall constitute the final decision.

## **ARTICLE V ENFORCEMENT**

### **Section 501          General Provisions**

If the specifications required by this Ordinance are not met within 45 days following service of notice the violation, the private road owner shall be subject to a civil penalty pursuant to N.C.G.S. 153A-123(c) of \$100.00 per day for each day the violation continues, recoverable by the County in a civil action in the nature of a debt. The purpose of this civil fine is not punitive but intend to help defray any potential costs associated with repairing said private roads. In addition to all other remedies available either at law or in equity, as violation of this order is deemed a public nuisance the County may institute an action in the General Court of Justice, more specifically the Superior Court of Bertie County, seeking enforcement of the ordinance by injunction and order of abatement pursuant to N.C.G.S. §153A-123(d) and (e), including but not limited to, action by the County seeking an order of abatement requiring the private road owner to make the necessary improvements to said private road within the time allowed by the Court, whereupon noncompliance with the abatement order the County may execute the Order, making the necessary repairs and maintenance, creating a lien upon the owner's real property for the costs of executing said order.

Bertie County does hereby under the powers granted it pursuant to in N.C.G.S. §153A-123(c), specifically state and hold that violation of this ordinance shall not be a misdemeanor under N.C.G.S §14-4, and that a violation of this ordinance shall not be subject to a criminal penalty, other than those penalties assessed by a court pursuant to it's contempt powers.

**PROCESS FOR ENFORCEMENT OF ROAD SAFETY  
ORDINANCE**

**1. Notice of Violation**

- a. Upon complaint by citizen or any other concerned party, the Sheriff or Director of EMS will investigate designated area
- b. Sheriff or Director of EMS will determine if road in violation of ordinance
- c. The County shall have Sheriff Department personally serve a written notice of violation on any landowners in violation providing 45 days to repair road

**2. Appeal**

- a. Land owner will have ten days to provide written notice of appeal to County
- b. After appeal County will set the hearing at the next regularly scheduled meeting
- c. Following the hearing on the appeal, the County has 10 days to provide a written decision


**3. Enforcing Violation**

- a. If after appeal or the expiration of the 45-day time limit the land owner has not made repairs, the County may file an action against the land owner in Superior Court. A fine of \$100.00 a day runs during this time period following the 45-day reprieve.
- b. Court may initially order the landowner to repair the road at cost within a certain time period.
- c. If landowner still refuses, County may get an order of abatement and hold the landowner in contempt.
- d. If County receives an Order of Abatement, the County can then go make repairs to road and place lien upon the property for the cost of said repair.

## ADOPTION

The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare of Bertie County residents, and this Ordinance shall be in full force and effect immediately after its passing publication, and posting, as required by law. This Ordinance shall be effective upon adoption.

Ordinance hereby adopted on the 6<sup>th</sup> day of May, 2019.



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John Trent, Chairman  
Bertie County Commissioners

**ATTEST:**



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Sarah Tinkham, Clerk to the Board  
Bertie County