

**A BILL FOR AN ORDINANCE CREATING REGULATIONS REGARDING
STREETS AND TOWN RIGHTS-OF-WAY IN THE RESIDENTIAL ZONING
DISTRICTS**

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF FOXFIELD, COLORADO:

Section 1. The Board of Trustees hereby adopts the following regulations regarding streets and Town Rights-of-Way within the Town of Foxfield, to read as follows:

STREETS AND TOWN RIGHTS-OF-WAY

A. PURPOSE AND INTENT

The Town's streets and right-of-ways are held by the Town primarily for the purpose of pedestrian, bicycle, equestrian and vehicular passage, for the provision of essential public safety services, including police, fire and emergency medical response services, the provision of utilities and public health services, including municipal water service and storm drainage, and consistent with and pursuant to the power vested in the Town by C.R.S. § 31-15-702, as the same may be amended from time to time.

The purpose of this section is:

To provide clear visibility, unobstructed by structures or vegetation in sight distance triangles at intersections.

To provide clear visibility and safe passage, unobstructed by structures or vegetation, for citizens traveling along the streets and right-of-ways within the Town.

To provide for open, unobstructed roadsides and ditches with native grass and non-obstructive landscaping.

To preserve opportunities to construct planned trails and other future trails.

To prevent damage to streets and paved surfaces.

To provide further guidance for what citizens may do on Town property.

To promote the health, safety and welfare of the public, and to prevent the creation of nuisances.

B. DEFINITIONS

- 1) **Breakaway Support:** Supports for mailboxes should be of adequate strength and size to properly support the box. The ideal support is an assembly which, if struck, will bend or fall away from the striking vehicle instead of severely damaging the vehicle and injuring its occupants. A Breakaway Support should be no larger than a 4" x 4" wood post or a metal post with strength no greater than a 2" diameter schedule 40 steel pipe, and which is buried no more than 24 inches deep. Support posts should not be set in concrete.
- 2) **Custom Mailbox:** A mail receptacle erected at the edge of a roadway or roadside of a street constructed using materials that do not meet the definition of a Roadside Mailbox and Breakaway Support.
- 3) **Monument:** A pillar structure or other entryway feature of stone, brick, stucco, wood or similar material.
- 4) **Fence:** A linear structure of wood, wire, metal, brick, stone, frame-stucco or other manufactured material, or combination thereof, which may include gates and posts, intended to define an area, mark a property boundary, contain animals, or provide screening.
- 5) **Landscaping:** Any combination of living plants (excluding native grass) and non-living landscape material (such as stone, rocks, sand, mulch, walls, or berms).
- 6) **Mailbox:** Either a Roadside Mailbox or Custom Mailbox.
- 7) **Overlot Grading Permit:** A Town permit which governs the movement of any earth, either excavation or fill, on Town Rights-of-Way or on private property. The requirements for this permit include prior approval of an "Erosion and Sediment Control Plan". See the Town adopted Arapahoe County Storm Drainage Design and Technical Criteria, as the same may be amended from time to time.
- 8) **Public Improvements Construction Permit:** A permit which governs the installation or replacement of Town maintained public improvements, including sidewalk, curb and gutter; any roadway subbase, base and asphalt pavement, drainage and flood control structures, piping, or channels; signs and traffic signals; and the construction of new utility mains or extension of existing mains.
- 9) **Public Right-of-Way Use Permit:** A permit that governs the construction, removal, repair, or maintenance of utilities, including cable TV, signs and other facilities in the Public or Town Right-of-Way.
- 10) **Town Right-of-Way:** Any street, avenue, boulevard, highway, sidewalk, trail, alley or similar place which is owned either in fee or through an easement, or otherwise controlled by a governmental entity, as more particularly defined in Section (E) of this Ordinance.
- 11) **Right-of-Way License** A license that may be granted to the owner of a property adjoining a Town Right-of-Way for permission to construct and or maintain a non-conforming Structure in the Town Right-of-Way adjacent to the owner's property.

- 12) **Roadside Mailbox:** A mail receptacle meeting the specifications of the United States Postal Service ("USPS") with the inscription plainly legible "U.S. MAIL" and "APPROVED BY THE POSTMASTER GENERAL," which is erected at the edge of a roadway or roadside of a street and is mounted on a Breakaway Support, and is intended or used for the collection of mail and is to be served by a mail carrier from a vehicle.
- 13) **Sight Distance Triangle:** A triangular-shaped portion of land established at street intersections in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection.
- 14) **Structure:** Includes but is not limited to street, driveway, culvert, Fence, gate, post, Monument, sign, Mailbox, fire hydrant, public utility, berm, hedge and Landscaping, among others.

C. PERMITS

- 1) A permit shall be required for any construction or installation within any street or Town Right-of-Way, or for any substantial modification of existing features or uses of any street or Town Right-of-Way. Depending upon the type of work to be done, one or more of the following permits may be required: a) Public Right-of-Way Use Permit, b) Public Improvements Construction Permit, or c) Overlot Grading Permit. Application for such permits shall be submitted to the office of the Town Clerk.
- 2) It shall be unlawful and deemed a violation of this Ordinance to commence construction in or alteration of streets or Town Rights-of-Way without an approved permit and any such violation shall be subject to the penalties set forth in Section (K) of this Ordinance.

D. RIGHT-OF-WAY LICENSE

- 1) The Town may grant a Right-of-Way License to an adjoining property owner to allow a Structure in the Town Right-of-Way that would otherwise have been prohibited by this section. Right-of-Way Licenses are granted at the discretion of the Town and may be revoked at any time; concurrently the Town may also require removal of the Structure. Application for such license may be submitted to the office of the Town Clerk.
- 2) In general, construction in the Town Right-of-Way is discouraged, however, a Right-of-Way License may be granted for Structures based upon consideration of the following conditions:
 - a. The Structure would break away easily if struck by a vehicle.
 - b. The Structure does not obstruct the vision of drivers or pedestrians;
 - c. The Structure does not obstruct any existing or anticipated future equestrian, pedestrian or bicycle trails or paths;

- d. The property owner adjoining the Town Right-of-Way where the Structure is located agrees to provide adequate liability insurance for said Structure for as long as said Structure is located in the Town Right-of-Way in the event that such insurance is required by the Town, and agrees to execute the License Agreement attached hereto as **Attachment 1**, and incorporated herein by this reference; and
- e. The property owner adjoining the Town Right-of-Way agrees to indemnify the Town against all liability or claims related to the Structure.

E. THE TOWN RIGHT-OF-WAY (ROW) – Defined.

The Town of Foxfield owns in fee simple the Town Rights-of-Way. Most Town Rights-of-Way are platted sixty (60) feet wide, though some are fifty (50) feet wide. The width of the paved street surface within the Town Right-of-Way is twenty-four (24) feet. It is important to note that property lines do not extend to the edge of the street pavement. The Town Right-of-Way includes the 24 foot wide paved surface plus approximately an additional 13 or 18 feet of land on each side of the paved surface (see figure 1). Not all paved surfaces are centered within the Town Right-of-Way. **It is the resident’s obligation to check the survey of the property and property boundary markers to determine correct property boundary lines.**

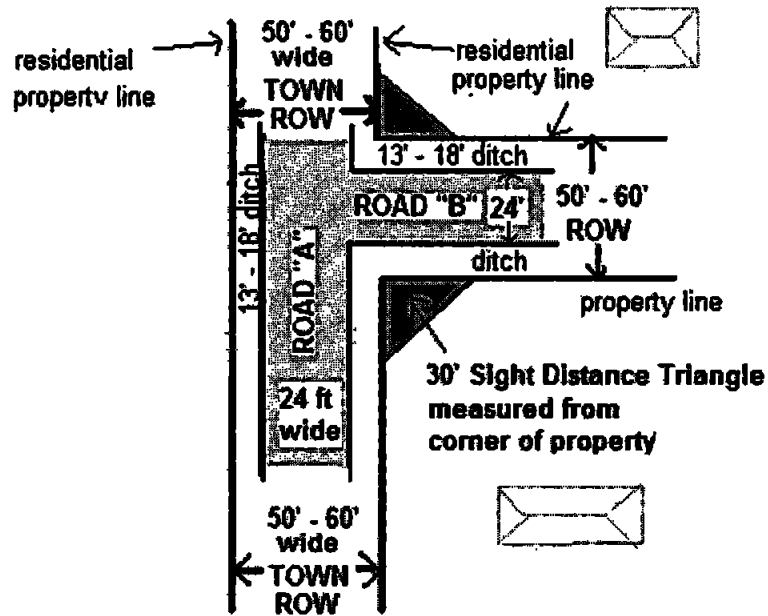


Figure 1. Right-of-Way

- 1) THE FOLLOWING ARE **ALLOWED** IN THE TOWN RIGHT-OF-WAY:
 - a. Roadside Mailboxes in accordance with subsection (F)(1) below.
 - b. Custom Mailboxes in accordance with subsection (F)(2) below.
 - c. Driveways and culverts with an approved Public Right-of-Way Use Permit in accordance with Section (C) above.

- d. Signs in accordance with Article III, Section 7 of the Town of Foxfield Zoning Regulations.
 - e. Structures erected by a governmental agency or public utility.
 - f. Structures for which the Town has granted a Right-of-Way License in accordance with Section (D) above.
 - g. Native grass.
 - h. Landscaping, including non-obstructive plant material, stone, rock, mulch, brick, and railroad ties, may be used adjacent to a driveway to protect a culvert or driveway edge, provided such use i) is located within ten (10) feet of either end of a Town approved driveway culvert, ii) does not exceed the elevation of the adjoining street and iii) does not alter or impede drainage in a culvert or ditch.
- 2) THE FOLLOWING ARE **PROHIBITED** IN THE TOWN RIGHT-OF-WAY; however, the Town may consider permit or Right-of-Way License applications for structures or activities that would otherwise have been prohibited by this Section. In no case shall the following be permitted without an approved permit or Right-of-Way License:
- a. Landscaping, including stone, rock, mulch, brick and railroad ties, except when located within ten (10) feet of the edge of a driveway culvert in accordance with subsection (E)(1)(h) above. Otherwise, only native grass is permitted in the Town Rights-of-Way along roadsides.
 - b. Monuments.
 - c. Fences.
 - d. Storage of vehicles, equipment or materials.
 - e. Use of street as staging area for construction material or equipment.
 - f. Routine parking of vehicles in the Town Right-of-Way.
 - g. Excavation.
 - h. Filling.
 - i. Altering or impeding drainage.
 - j. Cutting of curbs or street pavement.
 - k. Any alteration of the Town Right-of-Way that would impact a planned trail as defined in the Master Plan as amended from time to time.
 - l. Installation, alteration, or construction of any Structure, other than a Structure permitted by this ordinance.
 - m. Removal of any Structure erected by the Town, or other governmental agency or public utility.

F. MAILBOXES.

1) ROADSIDE MAILBOX REQUIREMENTS.

- a. Roadside Mailboxes shall consist of a mail receptacle meeting the specifications of the United States Postal Service ("USPS").
- b. Roadside Mailboxes shall be mounted on a Breakaway Support of adequate strength and size to properly support the box. The use of heavy metal posts, concrete posts, and miscellaneous items of farm equipment, such as milk cans filled with concrete, should be avoided. The ideal support is an assembly which, if struck, will bend or fall away from the striking vehicle instead of severely damaging the vehicle and injuring its occupants. A support for a Mailbox which should be no larger than a 4" x 4" wood post or a metal post with strength no greater than a 2" diameter schedule 40 steel pipe, and which is buried no more than 24" deep. A metal post should not be fitted with an anchor plate; however, an anti-twist attachment is acceptable. Breakaway Supports should not be set in concrete.
- c. The post-to-box attachment shall be of sufficient strength to prevent the box from separating from the post if a vehicle strikes the post.
- d. The bottom of a Roadside Mailbox shall be forty (40) to forty-eight (48) inches above the mail stop surface, or as defined by USPS installation requirements.
- e. The face of a Roadside Mailbox shall be offset behind the edge of pavement or curb a distance of eight (8) to twelve (12) inches, or as defined by USPS installation requirements.
- f. The adjoining property owner shall be responsible for the maintenance of the Roadside Mailbox.

2) CUSTOM MAILBOX REQUIREMENTS.

- a. A Custom Mailbox constructed using materials that do not meet the definition of a Roadside Mailbox and Breakaway Support, may be installed only if i) a permit application for a Custom Mailbox is submitted to the Town of Foxfield, ii) the application is approved by both the Board of Trustees and the Town Engineer, and iii) a Right-of-Way License has been issued in accordance with subsection (D) above.
- b. A Custom Mailbox must conform to the following requirements and any additional rules set forth in the application approval:
 - i. The structure supporting the Custom Mailbox shall be at least twelve (12) inches from the back of curb or edge of pavement.
 - ii. The entire Custom Mailbox structure shall not exceed the dimensions of 2 feet in width, 2 feet in depth, and 5 feet in height and shall be hollow.
 - iii. The Custom Mailbox structure shall be located on a 2'6" wide x 2'6" deep x 4" thick concrete pad. The Custom Mailbox structure shall not be permanently affixed to the concrete pad so that it shall yield, break away, or

- slide off its base if struck by a vehicle.
- iv. The adjoining property owner shall be responsible for the maintenance of the Custom Mailbox.

G. RESIDENTIAL DRIVEWAYS & CULVERTS

- 1) All new or replacement driveways and culverts, and temporary construction driveways require review by the Town Engineer and approval of a Public Right-of-Way Use Permit in accordance with Section (C) above and the Town of Foxfield Basic Principles for Single Family Residential Driveways.
- 2) The minimum separation distance between any two residential driveways, either on the same side of the street or on opposite sides of a street, should be thirty-five (35) feet where possible.
- 3) The width of a residential driveway within the Town Right-of-Way shall be a minimum of twelve (12) feet to a maximum of twenty-two (22) feet (or twenty-four (24) feet with flares).
- 4) The minimum separation distance required between a residential driveway and a major arterial street such as Arapahoe or Parker Roads, is two hundred ten (210) feet.
- 5) The minimum separation distance required between a residential driveway and a residential street intersection, is fifty (50) feet.
- 6) An eighteen (18) inch diameter culvert or equivalent, to be determined by the Town Engineer, in line with the roadside ditch centerline, shall be required for all residential driveways where roadside ditches drain across a residential driveway location.
- 7) It is prohibited to place irrigation lines, electrical lines, cables, or other features inside culverts.
- 8) Construction entrances on residential lots shall have the same requirements as a residential driveway.

H. SIGHT DISTANCE TRIANGLE

- 1) At all street intersections there shall be maintained a clear field of vision between a point which is 36 inches above the average street grade, and 96 inches above that point. Such field of vision shall be of such a distance as to enable the operator of any motor vehicle, bicycle or other transportation device, or horseback rider, to clearly see onto the intersecting street from a distance which is thirty (30) feet along the property line from the point where such street Rights-of-Way intersect, providing for clear visibility from each of said streets. Said field of vision is described as a Sight Distance Triangle, and is determined by measuring from the Town Rights-of-Way point of intersection a

distance of thirty (30) feet along each Town Right-of-Way line as depicted in Figure 1.

- 2) The following Structures shall be permitted within the Sight Distance Triangle:
 - a. Fences that are seventy percent (70%) or more open as viewed from outside the Fence. For example, a rail or wire fence. Solid fences such as stockade or board-on-board fences are prohibited.
 - b. Utility poles, light standards and traffic control devices, shall be permitted in the sight distance triangle.

I. CONSTRUCTION ADJACENT TO RIGHTS-OF-WAY.

To prevent encroachment, the Town may require a stamped or sealed Improvement Location Certificate or a stamped or sealed survey from a Professional Licensed Surveyor prior to construction of any Structure, Fence, Monument, or Landscaping feature proposed to be located on private property adjacent to an easement or Town Right-of-Way.

J. GENERAL PROVISIONS

- 1) Any Structure constructed before the effective date of this ordinance will be required to comply with the provisions set forth herein.
- 2) The Town shall have the authority pursuant to this Ordinance and C.R.S. § 31-15-702, as the same may be amended from time to time, to order the repair, alteration, or removal of any Structure, vegetation, or Landscaping feature located in a street or Right-of-Way that constitutes a hazard to life or property, is a nuisance, or that does not comply with the requirements of this Section.
- 3) The Town shall have the authority to order the repair, alteration, or removal of any Structure located in a Sight Distance Triangle that constitutes a hazard to life or property or that does not comply with the requirements of this Section.
- 4) No provision of this Ordinance shall be construed to impair any common law or statutory cause of action, or legal or equitable remedy therefrom, including injunctive relief, of any person for injury or damage arising from any violation of this Ordinance or from other law.

K. PENALTY

- 1) Violations of this Ordinance shall be punishable by a fine not to exceed four hundred ninety-nine dollars (\$499.00) per violation. Each day such violation continues shall be considered a separate offense. In addition, in the event a violation is found, the Town may seek restitution of all actual costs incurred by the Town associated with any investigation, enforcement action abatement or prosecution of a violation.
- 2) In addition to the imposition of a fine in accordance with subsection (1) of this Section (K), the Town may also seek an order from the Town of Foxfield Municipal Court to

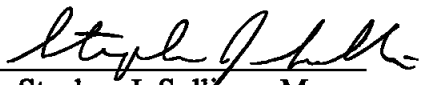
compel a person to repair, alter, or remove of any Structure unlawfully located in the Town Right-of-Way. If such a Structure has not been repaired, removed or altered or if the Town Right-of-Way has otherwise not been restored within the time specified in a Municipal Court order, then the Town may remove the Structure and charge the total cost of the removal and any necessary restoration of the Right-of-Way, plus an additional fifteen (15%) of the total to cover administrative costs, to the person against whom the court order was directed.

Section 2. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police powers of the Town of Foxfield, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This ordinance shall become effective thirty (30) days after final publication.

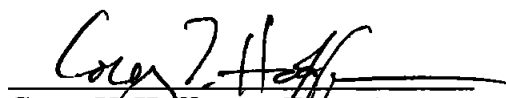
Adopted as Ordinance No. 5 Series of 2007, by the Board of Trustees of Foxfield, Colorado, and signed and approved by its Mayor or presiding officers this 6th day of September A.D. 2007.


Stephen J. Sullivan, Mayor

ATTEST:


Becky Catterall, Town Clerk

Town Seal


Corey Y. Hoffmann, Town Attorney
(Approved as to form)

Foxfield/Streets & Town ROW Code/ Streets & Town ROW Ordinance

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2007, by and between the Town of Foxfield, Colorado (the "Town") and ("Licensee").

For and in consideration of the sum of ten dollars (\$10) paid by the Licensee to the Town, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. THE LICENSE

Licensee owns the property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and desires to obtain a License to occupy and use the property more particularly described and depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Property"). Subject to all the terms and conditions hereto, the Town hereby grants to Licensee a license to occupy and use the Property for the purpose set forth in Section 2 herein.

SECTION 2. TERMS OF AGREEMENT

The Property may be used and occupied by the Licensee for the purpose of maintaining a fence/driveway/structure/monument over and on a portion of the public right-of-way.

SECTION 3. TERMINATION

Either party may terminate this Agreement by giving written notice to the other party specifying the date of termination, such notice to be given not less than thirty (30) days prior to the date specified therein.

SECTION 4. MAINTENANCE

Licensee shall, at its own expense, keep and maintain in good repair any fixtures or structures constructed, placed, operated or maintained on the Property and, within thirty (30) days of termination of this Agreement, shall remove such fixtures.

SECTION 5. DAMAGE TO PROPERTY

Licensee shall be responsible for all damage to the Property arising out of or resulting from the use of the Property by the Licensee, its agents, employees, visitors, patrons and invitees. The Town shall notify Licensee immediately upon discovery of any damage to the Property. Licensee shall correct and repair the damage within one (1) week of notification or knowledge of the damage unless otherwise directed by the Town.

SECTION 6. INDEMNIFICATION

Licensee agrees to indemnify and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims and demands arising out of the placement, use and operation of the Property. Licensee agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at his sole expense, or, at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with any such liability, claims or demands. Licensee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

SECTION 7. INSURANCE

Licensee agrees to procure and maintain an insurance policy which includes and covers the Property that is the subject of this Agreement, and to name the Town of Foxfield as an additional insured thereon for the duration of this Agreement. Such insurance policy shall at a minimum include liability and property damage insurance, with a combined single limit for bodily injury and property damage of one hundred fifty thousand dollars (\$150,000.00) per person and six hundred thousand dollars (\$600,000.00) per occurrence. A Certificate of Insurance showing the Town as an additional insured thereon shall be provided to the Town within thirty (30) days of execution of this Agreement. The failure to provide the Certificate of Insurance, or the failure to maintain the insurance policy required by this Agreement shall be grounds for immediate revocation of this License Agreement. In addition, Licensee agrees to notify any successor in interest to the Property of the existence of this Agreement, and shall also provide notice to the Town of any sale of the Property or any other conveyance that creates a successor in interest to this Agreement.

SECTION 8. NOTICES

Any notice given pursuant to this Agreement by either party to the other shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the Town: Town of Foxfield

To Licensee: _____

