

ORDINANCE NO. 12-17-07

**ORDINANCE GOVERNING FENCING OF REAL PROPERTY AND  
RESTRICTING BLOCKING AND FENCING OF CLASS B AND D ROADS**

WHEREAS there is substantial real property (private and public) located in Wayne County that is used for agriculture, grazing, recreation, commercial, residential and other uses; and

WHEREAS there are numerous Class B and Class D roads located within Wayne County that cross private and public land and provide access to private and public land for various purposes; and

WHEREAS Wayne County believes that the use of real property, both private and public, within Wayne County and access to such property is necessary and important for the agriculture, commercial, residential, recreation and other purposes deemed important for the citizens of Wayne County; and

WHEREAS the Wayne County Commission believes it is in the best interest of the citizens of Wayne County that a fence ordinance prescribing what constitutes a lawful fence and providing regulations for fencing upon a change of land use, establishing responsibility for fences between landowners, and governing liability for trespass be established; and

WHEREAS the Wayne County Commission believes it is in the best interest of the citizens of Wayne County that travel over Class B and Class D roads not be impaired or interrupted;

NOW THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

1. Except as hereinafter provided, no person or entity owning or occupying real property within Wayne County, State of Utah, shall be entitled to collect damages, or have a claim for damages in court, for any trespass of livestock on farms, residences, or other private property, or land belonging to the United States of America or the State of Utah, if such land at the time of such trespass shall not have been enclosed by a legal fence properly maintained. Provided however, this prohibition shall not apply to adjoining private property owners if the damaged owner has offered to equally share the cost and labor of constructing a fence with the adjoining owner of whose livestock has trespassed, and the latter has refused to participate in the cost and labor of constructing a fence.

2. A legal fence is defined for the purpose of paragraph number 1 above as a fence with not less than four (4) horizontal barriers consisting of wires, boards, poles or other fence material, in common use in the neighborhood with posts set no more than sixteen (16) feet apart. The lower barrier shall not be more than eighteen (18) inches above the ground and the space between any two barriers shall not be more than twelve (12) inches, and the height of the top barrier must be at least forty-eight (48) inches above the ground, unless otherwise approved by

Wayne County.

3. Unless otherwise agreed between adjoining landowners the cost of construction of a legal fence between adjoining landowners or users shall be divided equally. The cost and responsibility of maintenance thereafter shall also be shared equally, unless said fence is damaged or destroyed by the neglect or intentional act of one landowner or user, in which case, the person damaging or destroying said fence shall be solely responsible for repairs.

4. Notwithstanding any other provision or section of this Ordinance, when a landowner changes the use of his, her or its real property from agricultural use to any other use, said landowner shall bear the sole cost and responsibility for erection of a new fence or repair of an existing fence sufficient to ensure that livestock on adjoining lands are prevented from entering such real property.

5. Notwithstanding this Ordinance it is unlawful for any owner of livestock to intentionally or recklessly, and without permission, allow their livestock to be upon the real property of another owner; except when such livestock are being moved to or from traditional grazing pastures or allotments.

6. For the purpose of this Ordinance a person or entity acts "intentionally" with respect to the nature of his or its conduct or to a result of his or its conduct, when it is his or its conscious objective or desire to engage in the conduct or cause the result.

7. For purposes of this Ordinance a person or entity acts "recklessly" with respect to circumstances surrounding his or its conduct or the result of his or its conduct when he or it is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

8. Notwithstanding the provisions of this Ordinance the Wayne County Sheriff's Office or other appropriate law enforcement agency may remove and stray pen livestock from private or public property where a clear and present danger to persons or property exists; or where the livestock owner intentionally or recklessly allows livestock to trespass upon the real property of another. Wayne County or other appropriate sponsor of law enforcement may recover from the owner of the livestock the actual costs of stray penning and keeping such livestock and is granted a lien upon such livestock as security for the costs incurred. Clear and present dangers to persons or property include the following:

a. livestock are located on or dangerously near highways and streets in areas that are not openly grazed; except when such livestock are being moved to or from traditional grazing pastures or allotments;

b. livestock have, or are destroying improvements or fixtures in a manner not associated with normal grazing.

9. In the event livestock locate themselves on the real property of another the owner of the livestock may go onto such real property to remove the livestock regardless of prohibitions against trespass; so long as the removal can be accomplished without unreasonably causing damage to the real and personal property where the livestock may be found.

10. No person or entity may place a fence, gate or other restriction that temporarily or permanently stops or interrupts travel across any Class B or Class D road existing within Wayne County; regardless of whether such gate or other restriction is locked or unlocked.

11. Persons or entities desiring to fence or otherwise enclose their real property upon which a Class B or Class D road exists must use a cattle guard or other type of device that does not restrict travel on such Class B or Class D roads; or must fence the side(s) of such roads passing through or onto their property so as to allow unimpeded travel on such existing Class B or Class D roads.

12. A violation of paragraphs 5 and 10 above of this Ordinance constitutes a Class B Misdemeanor.

13. In the opinion of the Board of County Commissioners of Wayne County, State of Utah it is necessary to the preservation of the health, safety and welfare of the residents of Wayne County, that this Ordinance take effect immediately. Therefore, this Ordinance shall take effect immediately upon passage and publication.

14. All other ordinances existing under the laws of Wayne County that are inconsistent with this Ordinance are hereby repealed.

PASSED, APPROVED, ADOPTED AND ORDERED PUBLISHED this 17 day of December, 2007.

BOARD OF COMMISSIONERS  
WAYNE COUNTY, STATE OF UTAH

By Thomas A. Jeffrey  
County Commissioner

Attest:

Ryan Torgerson  
Wayne County Clerk

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