

Article 5. PRIVATE ROAD ORDINANCE

Section 8501. Title. This Ordinance shall be known as the City of Frankfort Private Road Ordinance.

Section 8502. Purpose. The City has hereby determined that as large tracts of land are divided, sold, transferred, and developed, private access roads are being created to provide access to the newly divided properties which are not subject to regulation under the Michigan Land Division Act of 1996 and other State regulations. The City determines it is in the best interest of the public health, safety, and welfare to regulate the construction, improvement, extension, relocation, and use of private roads to assure:

- A. That private roads are designed with width, surface, and grade to assure safe passage and maneuverability of private vehicles, police, fire, ambulance, and other safety vehicles.
- B. That said roads are constructed of suitable materials to ensure minimal maintenance and safe passage.
- C. That private roads will be constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and natural environment of the City.

Section 8503. Definitions. For purposes of this Ordinance, the following terms are defined as follows:

- A. An "existing private road" is a private road or a private road system which is used to provide access to three or more existing lots, or existing dwelling units as of the effective date of this Ordinance. An existing private road or road system must physically exist at the effective date of this ordinance.
- B. An "existing lot" is a lot which, as of the effective date of this Ordinance, meets at least one of the following conditions:
 - (1) The lot consists of a parcel described by metes and bounds for which a deed has been recorded with the Benzie County Register of Deeds, or of a parcel described by a land contract or memorandum of land contract which has been recorded with the Benzie County Register of Deeds;
 - (2) The lot has been assigned its own permanent parcel number by the Benzie County Property Description and Mapping Department and is individually assessed and taxed on that basis; or

- (3) The lot consists of a "condominium unit" (i.e., a portion of a condominium project designed and intended for separate ownership and use as described in the condominium master deed) located within a "site condominium" development for which a condominium master deed has been recorded with the Benzie County Register of Deeds in accordance with the requirements of the Michigan Condominium Act (PA 59 of 1978, as amended, MCLA 559.101 et seq.) and other applicable laws and ordinances.
- C. An "existing dwelling unit" is a single family home for which a building permit has been issued by the City as of the effective date of this Ordinance.

Section 8504. General Requirements and Application to Existing Private Roads.

- A. After the effective date of this Ordinance, a private road shall not be constructed, extended, or relocated, except in accordance with the minimum standards and requirements of this Ordinance.

For each existing private road as defined in this Ordinance an aerial tax map depicting the existing lots served by the existing private road with the existing private road drawn on the map as accurately as possible shall be filed with the Zoning Administrator and Fire Chief within six (6) months after the effective date of this Ordinance. If this information is not filed, the provisions of Section 8503(D) shall not apply. The Fire Chief shall review the existing private road within sixty (60) days of receiving information and inform the owner(s) of problems associated with the existing private road, if any. The Fire Chief will be required to file a report on the existing private road with the Zoning Administrator indicating his/her opinion of providing emergency service to the adjacent residents. This will be attached to any new building permit.

- B. Private roads are permitted only in the R-1 – Low Density Residential District.
- C. The provisions of this Ordinance shall not apply to access roads internal to any individual lot or parcel of land which has direct public street frontage access and is under the control of one person, firm, corporation, or association, provided that the access road does not provide access to any abutting lot or parcel of land. Examples of access roads that may be exempted from the provisions of this Ordinance include those serving multi-family dwellings, nursing homes, hospitals, factories, schools, mobile home parks, and shopping centers which are otherwise subject to site plan review and approval under the provisions of the Frankfort City Zoning Ordinance.
- D. Expansion of use.

(1) Private roads or roadway systems as defined herein and as registered under Section 8503(A) shall be permitted to serve additional lots or building sites, provided the entire road shall be upgraded to meet the standards contained in Attachment A plus all provisions of this Private Road Ordinance, subject to the following provisions:

- a. The additional lots or building sites shall be approved by the Planning Commission, if they meet all requirements of this ordinance. The Planning Commission shall also review the documents required by this Ordinance for compliance with the provisions of Sections 8505 and 8506. In the event the owner or owners of an existing private road find these requirements to create practical difficulties, the provisions of Section 8509 relating to variances may be pursued. Special consideration shall be given to all who complied with the original Ordinance. If the applicant desires to pursue a variance during the application process, the Planning Commission shall provide a recommendation to the City Council considering the provisions of Section 8509.
- b. Additional lots or building sites created shall comply with the lot size and lot width requirements of the applicable zoning district.

If extensions to the existing roadway system are made to serve any additional lots, the road construction standards shall be determined by the total number of lots served by the entire private road or roadway system as outlined in Attachment A, and the entire private road or roadway system shall comply or be made to comply with said construction standards.

If a new private road is proposed from an existing private road creating an intersection of the two roads, the new private road shall have a name different from the existing private road and shall be designed and constructed to meet the standards outlined in Attachment A based on all lots served by the new road and the existing road. If the existing private road does not meet the standards of Attachment A considering the lots served by the new private road, the existing road shall also be upgraded to comply with the road standards.

(2) An expansion of use shall comply with the procedure and application requirements of Section 8506 of this Ordinance.

- E. Requirements pertaining to names for private roads, house numbers and minimum lot frontage shall pertain to all private roads.

Section 8505. Minimum Standards for Private Roads.

- A. A private road shall be located within a private road easement and shall be designed by a registered engineer to comply with the requirements of this Ordinance. Such easement shall not be less than sixty-six (66) feet in width.

At any dead-end of such easement, the easement shall widen such that there is a minimum radius as set forth in Attachment A and a cul-de-sac as set forth in Attachment A.

- B. A lot shall have frontage on the private road easement which is at least equal to the minimum lot width required for the zoning district in which the lot is located. Lots fronting on a cul-de-sac may be reduced to forty (40) feet at the front lot line, as long as the lot meets the minimum width requirement at the minimum front yard setback line.
- C. A private road shall intersect and connect to a public road. The private road shall have a minimum of sixty six (66) feet of frontage at its access point to the public road. A private road shall not be approved which accesses a public street or road by another private road, except extensions permitted by this Ordinance.
- D. The private road shall be given a street name that is not the same or similar to any other street name in the county. A street sign bearing the street name given the private road meeting Benzie County Road Commission standards as to design, location, and maintenance shall be erected and maintained where such private road intersects any public road. The provision shall also apply to existing private roads. A street sign shall be erected within one (1) year after the adoption of this Ordinance. For all new private roads, the address shall be the name of the private road, not the adjacent public road.
- E. A private road shall be constructed to the standards indicated in Attachment A.
- F. A private road shall not exceed a grade of eight (8) percent; provided that within 30 feet of the intersection of a private road with any other private road or with any public right-of-way, a private road shall not exceed a grade of one and one-half (1.5) percent.
- G. A private road shall be constructed in a manner to provide effective storm water drainage and to prevent run-off onto adjacent property. If a private road crosses a natural drainage course, stream or other natural body of water, the method of crossing (by bridge, culvert or other structure) must be certified by a registered professional engineer so that it complies with applicable Benzie County Drain Commission and State of Michigan requirements.

- H. A dwelling unit which derives its primary access from a private road shall display a house number in a manner so that the number is at all times readily visible from the private road. The house numbers shall be a minimum of three (3) inches in height.
- I. In determining the location of a private road, consideration shall be given to safety of traffic entering and exiting the driveway in relationship with the public road.

Section 8506. Road Maintenance. The applicant (s) and/or owners(s) of the proposed private road shall provide to the City a recorded road maintenance agreement, access easement agreement, and deed restrictions that provides for the perpetual private (non-public) maintenance of such roads and/or easements to a necessary and reasonable standard to serve the parties having an interest in the private road. These documents shall contain the following provisions.

- A. A method of initiating and financing of such road and/or easements in order to keep the road in a reasonably good and usable condition.
- B. A workable method of apportioning the costs of maintenance and improvements.
- C. A notice that if repairs and maintenance are not made, the City Council may bring the road up to the design standards specified in Section 1.04 and assess owners of parcels on the private road for the improvements, plus an administrative fee in the amount of 5% of the total cost of the improvements.
- D. A notice that no public funds of the City of Frankfort are to be used to build, repair, or maintain the private road.
- E. Easements to the public for purposes of utilities, emergency and other public vehicles for whatever public services are necessary.
- F. A provision that the owners of any and all of the property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering with normal ingress and egress and use by any of the other owners. Normal ingress and egress and use shall include use by family, guests, invitees, tradesmen, and others bound to or returning from any of the properties having a right to use the road.

Section 8507. Procedure for Review of Private Roads.

- A. Permit Application and Fee

An application to establish, extend, or relocate a private road shall be filed with the City Superintendent along with a fee as set by the City Council. The application shall contain or be accompanied by the following information:

- (1) The name(s) of the owners and any other parties having any legal interest in the private road and the property across which it is to be constructed.
- (2) Permanent parcel number or legal description of the property over which the private road is to be constructed.
- (3) A site location map not to scale which shows the location of the parcel containing the road to surrounding properties and roadways within one-half mile of the site.
- (4) A scaled drawing showing the precise location, route, elevations, dimensions, specifications and design of the private road and any proposed extensions of the road, existing or proposed curb cuts and the location and distance to any public street which the private road is to intersect, in compliance with this Ordinance. (See Attachment A)
- (5) A scaled drawing illustrating the proposed lot divisions. (See Attachment A)
- (6) A road maintenance agreement, access easement agreement and deed restrictions as described in Section 8506 herein, shall also accompany the application.
- (7) A driveway permit from the Benzie County Road Commission.
- (8) A letter from the Benzie County Road Commission indicating there is no known duplication of the proposed private road name.

B. Review of Permit Application

- (1) The permit application, drawings and other required information shall be forwarded to the Planning Commission upon review by the City Superintendent to determine compliance with the standards for private roads.
- (2) The Planning Commission shall review this information and may consult with the City Fire Chief, Attorney, Engineer or Planner as deemed necessary. A Quorum of the Planning Commission shall be present to review and decide upon the permit application.
- (3) If the Planning Commission finds that the application meets the requirements of this Ordinance, it shall by a majority vote of the entire membership then approve or approve with reasonable conditions the application and direct the City Superintendent to issue a permit for the construction of the private road. This permit shall consist of a stamp noting approval and containing the signature of the

City Superintendent and the date of approval. Two copies of the private road plans shall be stamped for approval, one copy shall be kept by the applicant, and one by the City. This construction permit is not a Private Road Permit and does not authorize the construction of any dwelling units on the private road. The construction permit is valid for a period of one (1) year from the date of approval. If construction of the private road has not commenced within this one (1) year period, the permit shall expire. A new permit shall then be required before construction can begin. Any conditions imposed pursuant to this subsection shall be designed to insure that the standards and requirements of this Ordinance are met.

- (4) If the Planning Commission denies the application, the Planning Commission meeting minutes shall be provided to the applicant within fourteen (14) working days of the date of the Planning Commission meeting.

C. Final Compliance Requirements

Upon completion of construction of the private road, the applicant shall provide all of the following to the City Superintendent:

- (1) A letter from a registered professional engineer that the road has been constructed in compliance with the approved private road plans.
- (2) Documentation that the road maintenance agreement, access easement and deed restrictions have been recorded with the Benzie County Register of Deeds office.
- (3) A driveway permit for the private road from the City Superintendent.

D. Private Road Permit Issuance

Upon approval of all items required for final compliance, the City Superintendent shall issue a Private Road Permit.

E. Permits for Dwellings on Private Roads

A building permit shall not be issued for any principal dwelling which derives its primary access from a private road unless a Private Road Permit has been issued by the City and the road has either been completed in accordance with the approved permit or the applicant for the building permit or owner(s) of the private road right-of-way have provided the City with cash or irrevocable letter of credit in an amount determined by the City, to insure

construction of the private road in accordance with the approved private road construction permit within one (1) year from the issuance of the building permit. The letter of credit shall contain a provision that the City shall have the right to access the letter of credit if such letter is not renewed 30 days before the expiration date of the letter.

F. Permits for Dwellings on Existing Private Roads and Existing Lots

A Private Road Permit shall not be required for the issuance of a building permit for a principal dwelling on an existing lot which derives its primary access from an existing private road as defined herein except as provided in Section 1.03 herein.

Section 8508. City Liability. The owner(s) of the private road shall agree that by applying for and securing a permit to construct the private road they shall indemnify and hold the City harmless from all claims for personal injury and/or property damage arising out of the failure to properly construct, maintain, repair and replace the private road. Such wording shall appear on the application for the permit and be signed by the applicant.

Section 8509. Appeals. Any person affected by a decision regarding this Ordinance shall have the right to appeal the decision to the City Council within ten (10) days. Such appeal shall be filed with the Zoning Administrator in writing and shall state the reasons for appeal and any documents in support thereof. The City Council shall establish a time for hearing the appeal which shall be no later than thirty (30) days after filing. Written notice of such hearing by first class mail shall be provided to all adjacent properties which depend or may depend in the future on the private road for access and all properties within 300 feet of such private road and to all Planning Commission members. Such notice shall be given not less than nine (9) days prior to such hearing. The decision of the City Council shall be set forth in writing and delivered to the applicant within ten (10) calendar days following the hearing. The decision of the City Council shall be final. An appeal may be taken to Circuit Court.

Section 8510. Variances. The Planning Commission may grant a variance from the requirements of this Ordinance if it finds, based on evidence presented at a public hearing that all of the following conditions exist:

- (1) Exceptional or extraordinary circumstances exist in relation to the proposed private road, including exceptional topographical or physical conditions that do not generally apply to other private roads within the City.
- (2) The exceptional or extraordinary circumstances relating to the private road are not the result of any act or omission by the applicant or his or her predecessors in title.
- (3) The strict compliance with the regulations of this ordinance will unreasonably prevent the applicant from developing the property intended to be served by the private road or it will render conformity with the regulations of this ordinance unreasonably burdensome.

- (4) The requested variance will not cause an adverse impact on the development of surrounding property, property values, or the use and enjoyment of property in the immediate area.
- (5) The requested variance is the minimum variance necessary for the reasonable construction of the private road and for the development of the property intended to be served by the private road.

Section 8511. Violations and Penalties. Any person who shall violate any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of the Michigan Compiled Laws and shall be subject to a fine of not more than Five Hundred Dollars (\$500.00). Each day this Ordinance is violated will be considered a separate violation. Any action taken under this section shall not prevent civil proceeding against abatement or termination of the prohibited activity.

Section 8512. Enforcement Officer. The City Superintendent is hereby designated as the authorized city official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

Section 8513. Nuisance Per Se. A violation of this Ordinance is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety and welfare.

Section 8514. Separate Court Action. In addition to enforcing this Ordinance through use of a municipal civil infraction proceeding, the City may initiate proceedings in the circuit court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

CITY OF FRANKFORT

PRIVATE ROAD ORDINANCE

ATTACHMENT A - ROAD STANDARDS

Private Road Category	No. of Lots served	Dead-end Turnaround Easement Section 8505A	Minimum Surface Requirement Section 8505E	Minimum Road Width Section 8505E	Cul de sac Requirement Section 8505A	Maximum Grade Section 8505F	Registered Engineer Sec.8505A
A	3-4	60' radius min.	12" class 2 sand base 6" class 22A gravel surface	14'	40' minimum radius	8%	YES
B	5-7	60' radius min.	12" class 2 sand base 6" class 22A gravel surface	20'	40' minimum radius	8%	YES
C	8 or more	60' radius min.	12" class 2 sand base 6" 22A gravel 1-3/4 asphalt	20'	40' minimum radius	8%	YES

NOTE: Two (2) valley gutters required where needed for drainage. These standards apply to road extensions.