

**Effective 5/13/2014**

**72-5-104 Public use constituting dedication -- Scope.**

- (1) As used in this section, "highway," "street," or "road" does not include an area principally used as a parking lot.
- (2)
  - (a) A highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of 10 years.
  - (b) Dedication to the use of the public under Subsection (2) does not require an act of dedication or implied dedication by the property owner.
- (3) The requirement of continuous use under Subsection (2) is satisfied if the use is as frequent as the public finds convenient or necessary and may be seasonal or follow some other pattern.
- (4) Continuous use as a public thoroughfare under Subsection (2) is interrupted only when:
  - (a) the regularly established pattern and frequency of public use for the given road has actually been interrupted for a period of no less than 24 hours to a degree that reasonably puts the traveling public on notice; or
  - (b) for interruptions by use of a barricade on or after May 10, 2011:
    - (i) if the person or entity interrupting the continuous use gives not less than 72 hours advance written notice of the interruption to the highway authority having jurisdiction of the highway, street, or road; and
    - (ii) the barricade is in place for at least 24 consecutive hours, then an interruption will be deemed to have occurred.
- (5) Installation of gates and posting of no trespassing signs are relevant forms of evidence but are not solely determinative of whether an interruption has occurred.
- (6) If the highway authority having jurisdiction of the highway, street, or road demands that an interruption cease or that a barrier or barricade blocking public access be removed and the property owner accedes to the demand, the attempted interruption does not constitute an interruption under Subsection (4).
- (7)
  - (a) The burden of proving dedication under Subsection (2) is on the party asserting the dedication.
  - (b) The burden of proving interruption under Subsection (4) is on the party asserting the interruption.
- (8) The dedication and abandonment creates a right-of-way held by the state in accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.
- (9) The scope of the right-of-way is that which is reasonable and necessary to ensure safe travel according to the facts and circumstances.
- (10)
  - (a) The provisions of this section apply to any claim under this section for which a court of competent jurisdiction has not issued a final unappealable judgment or order.
  - (b) The Legislature finds that the application of this section:
    - (i) does not enlarge, eliminate, or destroy vested rights; and
    - (ii) clarifies legislative intent in light of Utah Supreme Court rulings in *Wasatch County v. Okelberry*, 179 P.3d 768 (Utah 2008), *Town of Leeds v. Prisbrey*, 179 P.3d 757 (Utah 2008), and *Utah County v. Butler*, 179 P.3d 775 (Utah 2008).

Amended by Chapter 107, 2014 General Session