

WASCO COUNTY PERMIT ORDINANCE

GENERAL PROVISIONS

Section 1. PURPOSE

It is considered to be in the public's best interest for utility facilities to be accommodated on the rights-of-way of County roads when such use and occupancy does not interfere with the free and safe flow of traffic or otherwise impair the road of its visual quality. In accordance with that determination and the provisions set forth below, this ordinance is adopted to provide a policy and procedure for such accommodation.

Section 2. AUTHORITY

ORS 374.305 (1) No person, firm or corporation may place, build or construct on the right of way of any state highway or county road, any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance or substantially alter any such facility, thing or appurtenance or change the manner of using any such approach road without first obtaining permission from the Department of Transportation with respect to state highways or the county court or board of county commissioners with respect to county roads.

ORS 374.310 (1) The Department of Transportation with respect to state highways and the county court or board of county commissioners with respect to county roads shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the use of the rights of way of such highways and roads for the purposes described in ORS 374.305. However, the department shall issue no permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) Such rules and regulations and such permits shall include such provisions, terms and conditions as in the judgement of the granting authority may be in the best interest of the public for the protection of the highway or road and the traveling public and may include, but need not be limited to:

- (a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.
- (b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for payment by the applicant of the costs of any of the foregoing.

(c) With respect to private road crossings, the granting authority may also require the applicant to furnish public liability and property damage insurance in a sum fixed by the granting authority, which insurance shall also indemnify the members, officers, employees and agents of such authority from any claim that might arise on account of the granting of the permit and the crossing of the highway or road by vehicles operating under the permit; and the granting authority may also require the applicant to furnish indemnity insurance, an indemnity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a sum fixed by the granting authority, indemnifying such authority for any damage to the highways or roads that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 shall not be exercised so as to deny any property adjoining the road or highway reasonable access. In determining what is reasonable, the department shall consider the authorized uses for the property identified in the acknowledged local comprehensive plan.

ORS 758.010 (1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of any charge other than charges allowed under section 2, chapter 664, Oregon Laws 2001, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection.

Nothing in this ordinance is intended to grant rights or imply approval in areas not falling within the authority and jurisdiction of the County. It is the responsibility of the applicant to determine the need for and to obtain such licenses, permits, or other forms of approval, which may be required by other municipal corporations, State agencies, Federal agencies, cities, utility companies, railroads, or private property owners.

Section 3. INTERPRETATION

The provisions of this ordinance shall be liberally construed to affect the purposes set forth above. Each provision requiring an applicant to furnish information shall be construed as intended to provide the County with all information which may be of assistance in evaluating the safety, utility, convenience, necessity and reliability of the applicant and its proposed facility. The provisions of this ordinance are declared to be minimum requirements fulfilling the applicant's obligations and where any provisions of this ordinance may be less restrictive than conditions imposed by any other provision of this ordinance, by any other law, rule or regulation of this County or other governmental unit, then the more restrictive shall apply.

Section 4. SEVERABILITY

The provisions of this ordinance are severable. If any section, sentence, clause, or part of this ordinance is adjudged to be invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. DEFINITIONS

The following definitions shall apply whenever the indicated term is used in this ordinance:

- (a) Applicant: The corporation, company, firm, business, partnership, individual or individuals named as such in the permit, together with their agents, employees, representatives, contractors, heirs and assigns.
- (b) Cattle Guard Permit: A permit allowing the placement of a cattle guard within the County road right of way. No cattle guards are permitted on County roads that are classified as arterials or collectors.
- (c) County: Wasco County, Oregon
- (d) County Court: The County Court of Wasco County, Oregon, acting in regular session or by its authorized representative.
- (e) County Road: A public road under the jurisdiction of the County that has been designated as a County road.

- (f) Local Access Road: A public road that is not a County road, State highway or City street.
- (g) Public Road: A road over which the public has a right of use that is a matter of public record.
- (h) Public Works Director: The person designated by the County Court as being responsible for administration of the road activities of the County.
- (i) Operations / Special Event Permit: A permit allowing temporary use of a County road right-of-way for business operations or public events, such as log loading, an aircraft taxiway, television commercials, scheduled public walks, runs and biking events.
- (j) ORS: Oregon Revised Statutes.
- (k) Right-of-Way: Land, property, or an interest therein, usually a strip, acquired for or devoted to road purposes.
- (l) Road: The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means, or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:
 - (1) Ways described as streets, highways, throughways or alleys.
 - (2) Road related structures that are in a right-of-way, such as tunnels, culverts or similar structures.
 - (3) Structures that provide for continuity of the right-of-way, such as bridges.
- (m) Road Approach Permit: A permit allowing construction or alteration of a facility which provides ingress to or egress from a County road (i.e., a driveway, an intersecting road or street, a footpath, a bike-path, widened vehicular access, etc.). The permit regulations apply to that portion of the facility, which is or will be upon a County road right-of-way.
- (n) Road Encroachment Permit: A permit allowing private facilities of a diverse nature, such as fences, structures, signs and landscaping, to be placed within a County road right-of-way. The permit shall state whether the permitted use is temporary or permanent.
- (o) Road Improvement Permit: A permit allowing alterations or improvements, such as grading, surfacing or oiling, of a Public road by a person not associated with the County Public Works Department.
- (p) Roadway: The portion of a road, including shoulders, for vehicular use.

- (q) Temporary: A permitted use of the right-of-way that is not permanent in nature, such as television commercials or public events. The Public Works Director shall have the authority to set the duration of any temporary use of the road right-of-way.
- (r) Utility Permit: A permit allowing the placement and routine maintenance of public facilities, such as water and sewer lines, gas lines and transmission lines, within a County road right-of-way.

Section 6. WORK IN RIGHTS-OF-WAY

- (a) Except as otherwise provided in this Ordinance, no person, firm or corporation shall place, build, construct, extend, enlarge or otherwise work on any facility, thing or appurtenance in the right-of-way of a County road without first obtaining a permit from the County Public Works Department. This requirement applies to all work, including, but not limited to, the following:
 - (1) Constructing, grading, surfacing or providing drainage facilities under the access to a private driveway or approach road;
 - (2) Pipelines, irrigation lines, sewer lines, underground cables, overhead wires and utility poles;
 - (3) Signs, billboards, symbols, notices, advertisements or directional guides;
 - (4) Sidewalks, curbs, gutters, retaining walls, meters, inlet basins, fences and ornamental objects;
 - (5) Planting of trees or other vegetation; and
 - (6) Mailboxes and supports other than those conforming to design standards provided by the Public Works Department.
- (b) No person shall construct or maintain any facility, thing or appurtenance within any such right-of-way in violation of any of the conditions of a permit or any of the provisions of this Ordinance.
- (c) No person shall use, occupy or maintain any facility, thing or appurtenance placed wholly or partly within the road right-of-way in violation of, or without first obtaining the permits required by, any law in effect at the time such facility, thing or appurtenance is so placed.
- (d) Nothing in this section shall be construed to prevent the County from removing anything from a County road right-of-way, whether or not the same is installed under a permit or in compliance with this Ordinance, where the County Court finds that such removal has become necessary to the public's use or improvement of the road.

Section 7. EXCEPTIONS TO CERTAIN REQUIRMENTS

- (a) A permit is not required for the following, provided the work does not involve excavation:
- (1) Performing maintenance or minor improvement to existing facilities lawfully in place;
 - (2) Utilizing lawfully installed facilities as intended when installed, including the following:

Inspection and cleaning of sewer and storm water facilities;

Inserting cables in existing conduits or making service connections within terminal structure; and

Utilization that is expressly acknowledged by prior permit provisions; and

Other minor activities as specifically approved in writing by the Public Works Director.

- (b) Nothing in this Ordinance shall:

- (1) Limit or affect any of the powers granted to, or duties imposed upon, the County Court, the Department of Transportation or the Public Utility Commissioner by ORS 758.010 and 758.020, or any rights granted or authorized under those statutes or any other statutes pertaining to powers, duties and rights aforesaid;
- (2) Grant any right for the construction or placing of an approach road, structure, pipeline, ditch, cable, wire or other facility, thing or appurtenance on the right-of-way of any County road.

Section 8. LOCAL ACCESS ROAD EXCEPTIONS

The requirements for local access roads are the same for County roads except as otherwise provided by this section or the regulations adopted to carry out this Ordinance. A permit is not required under this Ordinance for the following work within a local access road, but the work must comply with any applicable regulations:

- (a) Work on a driveway connection to the local access roadway from a single-family dwelling or a duplex.
- (b) An abutting property owner's development or care of the portion of the right of way from the property line to the curb or roadway shoulder.

- (c) Excavation to make a sewer, water or other service connection to property from facilities in the road, providing there is no excavation on or within three feet of the roadway.

Section 9. CHANGE IN USE OF ROAD APPROACH

A change in the manner of using a road approach that connects to or interests a County road requires a permit, as provided by ORS 374.305. A changed use includes, but is not limited to:

- (a) Any physical change requiring excavation, placing of an embankment, a culvert extension, construction of headwalls and repair or alteration of any existing lawfully installed facility pertinent to a driveway or approach road;
- (b) Any substantial change in the type or number of vehicles reasonably anticipated during the application for, and the review and approval of, the latest existing permit on file for a driveway or approach road; and
- (c) Any other change in the approach road or its use, which the Director of Public Works finds, may adversely affect the public's safety or the public's interest in the County road in the absence of limitations or conditions.

Section 10. REVIEW OF PERMIT APPLICATIONS

From the date this Ordinance becomes effective, the authority contained in ORS 374.305 through 374.324 relating to County roads applies to any facility, thing or appurtenance within a County road right-of-way.

After a completed application has been submitted, the Public Works Director, or his designate, shall review the application and shall issue the permit if he determines that the proposal will comply with the provisions of this Ordinance and the applicable requirements imposed by State law.

The Director may impose additional written conditions on a permit consistent with the provisions of this Ordinance if he finds such conditions to be necessary to the public interest in the safe use of the road and the preservation of the public improvements therein and on the property adjoining the same.

The Director may also require the applicant to submit plans which, when approved, will become part of the conditions of the permit. The Director shall prepare appropriate forms to assist the applicant in providing the information necessary for the application review.

If the applicant disagrees with the Director's interpretation of the regulations or with the conditions imposed by the Director, or if the Director finds that the proposal raises problems of public safety or problems having to do with the public use or protection of the road, which problems are not addressed in the regulations, then either may refer the

application to the County Court, which shall, within 30 days, afford them an opportunity to be publicly heard and make its final decision in the matter.

If the County Court finds that the proposal creates a problem to public interests in the road, which cannot be solved by the application of the regulations or of adequate conditions, the Court shall deny the application. The Director shall arrange for whatever field study and inspection he deems to be appropriate to assure compliance with the requirements.

Section 11. ALTERATION OR REMOVAL OF TREES AND VEGETATION

- (a) The County has and claims the right to remove or alter any tree, or remove any other vegetation, situated entirely within the County road right of way if, in the judgement of the Public Works Director, such removal is necessary to the use or improvement of the road or related facilities or for the public safety.
- (b) If the Public Works Director finds that a tree to be removed may have marketable or ornamental value to the owner of the land abutting the half of the right of way on which the tree is situated, the County shall first send notice to the abutting owner, giving the owner thirty days within which to secure a permit and alter or remove the tree or vegetation. If within that period of time the tree or other vegetation is not removed or altered to the extent necessary to the public safety and convenience as found by the Director, the County may remove or alter the tree or vegetation and, if it is a merchantable tree, retain it to defray the cost of removal. For purposes of giving notice under this subsection, the owner, according to the Assessor's records of the property abutting the half of the right of way within which the tree is situated shall be deemed the owner of the underlying tree. Notwithstanding the foregoing, if the Director or his designate determines that an emergency exists which may affect the public safety; no notice shall be required prior to removal of the tree or vegetation.
- (c) The Public Works Director may define by written policy those criteria by which he determines that the removal or alteration of a tree or other vegetation within a County road right of way is necessary to the public safety or convenience; that a tree is marketable or has ornamental value to abutting property; or that an emergency exists which may affect the public safety. When such written policy is approved by the County Court, any determination made by the Director pursuant to the policy is final.
- (d) Notwithstanding subsection (c) hereof, the County Court may, on its own motion, within the said thirty days, review a proposal to remove a tree under this section and may determine, at its discretion, whether there is a public interest which outweighs the public safety issue raised by the presence or condition of the tree, or may determine at its discretion that the public safety and convenience can be adequately served without the removal of the subject tree considering its value or function.

Section 12. PERMIT REGULATIONS AND CLASSIFICATION

- (a) The regulations pertaining to each of the various permits issued by the Public Works Director, which are set forth in Exhibits A through F, following the text of this Ordinance, are hereby adopted and made a part of this Ordinance.
- (b) If approved by the County Court, a permit fee shall be paid at the time the application for a permit is submitted to the Director. All permits issued shall be classified under one of the following headings:
 - (A) Cattle Guard Permit
 - (B) Operations / Special Event Permit
 - (C) Road Approach Permit
 - (D) Road Encroachment Permit
 - (E) Road Improvement Permit
 - (F) Utility Permit
- (c) Copies of the regulations appropriate to the permit classification, as determined by the Director, shall be attached to, or referenced on, each permit issued.

Section 13. PERMIT FEES

Fees for the various permit classifications shall be established by the Wasco County Court. The current fees schedules for permits required by this ordinance are as follows:

(A) Cattle Guard Permit	<u>\$ 0.00</u>
(B) Operations Permit	<u>\$ 0.00</u>
(C) Road Approach Permit	<u>\$ 0.00</u>
(D) Road Encroachment Permit	<u>\$ 0.00</u>
(E) Road Improvement Permit	<u>\$ 0.00</u>
(F) Utility Permit	NO FEE

Section 14. EXEMPTIONS FROM FEE REQUIREMENT

No fee shall be required for a permit in the following circumstances:

- (a) Where installation of public facilities by public or quasi-public entities is involved.
- (b) Where the Public Works Director finds that the organization that proposes the installation is engaged in a nonprofit activity and that the activity is for the benefit of the general public.
- (c) Where the permitted facility, thing or appurtenance in the right of way of the County road is in lawful existence as of the effective date of this section of the ordinance, except that this exemption does not apply to work done after such effective date.

(d) In any instance where the Director deems it to be in the best interest of the County to waive the permit fee.

Section 15. ENFORCEMENT OF PERMIT REGULATIONS

If any person, firm or corporation fails to obtain a permit or to comply with the appropriate regulations or permit conditions, then the Public Works Director may take appropriate action to remove or correct the installation and recover the cost from the person, firm or corporation responsible, following a thirty day written notice, all in accordance with the authority in ORS 374.307 and 374.320 as such statutes relate to County roads.

The applicant agrees that, in the event that he fails to pay said costs incurred by the County for the removal, relocation or repair of said installation, and it becomes necessary for the County to commence an action or proceeding in a court of competent jurisdiction to recover said removal, relocation or repair costs, the County shall be entitled to recover in addition to the statutory court costs and disbursements, such additional sum as the court may adjudge reasonable for attorney's fees to be allowed in such action or proceeding.

Section 16. INSPECTION PHOTOGRAPHS

If requested by the County, applicants shall submit color photos of the proposed work site prior to construction, during construction and after the final installation is completed. The photos should accurately depict the work site and the work being performed. Photos should be taken frequently enough to provide continuous, clear views of the work area, generally every 50'. Photos should also be taken of culvert ends, retaining walls, or any other facilities that are likely to be affected by the permit work. All photographs become the property of Wasco County.

The project size, in general, is determined by the County based upon the number of photos required due to the scope of the project and the complexity and build up of the area surrounding the work site. Small Projects: 1-10 photos, Medium Projects: 11- 25 photos, Large Projects: more than 25 photos.

Polaroid Photographs are not acceptable. The size of the photos should be the standard 3 ½" x 5". Photos taken with a digital camera are preferable and should be turned in on a 3 ½" hi-density diskette.