

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Study Session Worksheet

**Presentation Date:** May 8, 2012 **Approx Start Time:** 10:30 AM **Approx Length:** 30 minutes

**Presentation Title:** Update to County Code 7.03 Road Use

**Department:** DTD-Engineering

**Presenters:** Richard Nys and Scot Sideras

**Other Invitees:** Mike Bezner and Anja Mundy

### **WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

At the request of County Counsel, staff in DTD-Engineering have reviewed Section 7.03 of the County Code, which addresses Road Use. Staff have updated this section of the County Code to bring current the rules which govern road use and to better reflect how we currently do business. Staff requests that the BCC review and approve the update for adoption at a Business Meeting.

### **EXECUTIVE SUMMARY:**

County Code Section 7.03 is the Road Use Ordinance and addresses activity and construction in the right of way. Section 7.03 was codified in 2000, with amendments in 2003 and 2009. This update deletes the technical specifications that were included originally in the Code, which are often updated by the state and have become obsolete. These technical specifications will instead be included in the County Roadway Standards which are also being updated and will be approved by the DTD Director concurrently.

Additional special items that have been included in the Code for this update are a policy regarding Roadside Memorials (7.03.090.J) and a policy regarding Portable Storage Containers (7.03.090.I).

### **FINANCIAL IMPLICATIONS (current year and ongoing):**

None.

### **LEGAL/POLICY REQUIREMENTS:**

None of the proposed amendments are in response to statutory or legal requirements.

### **PUBLIC/GOVERNMENTAL PARTICIPATION:**

None.

### **OPTIONS:**

- 1) The Board can approve the updates to County Code Section 7.03 as presented.
- 2) The Board can request additional updates to County Code Section 7.03.
- 3) The Board can request no update be made to County Code Section 7.03.

### **RECOMMENDATION:**

Staff respectfully recommends that the Board of Commissioners approve the edits to County Code Section 7.03 as presented and bring forward to public hearing and action by the Commission.

**ATTACHMENTS:**

County Code Section 7.03, showing updates.

**SUBMITTED BY:**

Division Director/Head Approval

Department Director/Head Approval

County Administrator Approval

*Me by*  
*Ann G. [Signature]*

For information on this issue or copies of attachments,  
please contact Rick Nys @ 503-742-4702

## Chapter 7.03

### 7.03 ROAD USE

#### 7.03.010 Purpose

This Chapter shall govern: a) road use impediments, entrances, utility placements, and other activities within the right-of-way of County roads, local access roads, and public roads; b) activities on private property which impact the safe use of these roads; and c) vacation proceedings and road status changes.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2003, 1/23/03]

#### 7.03.020 Definitions

- A. ~~AASHTO MANUALS~~ Shall mean the American Association of State Highway and Transportation Officials Manuals, including "A Policy on Geometric Design of Highways and Streets", "A Guide for Erecting Mailboxes on Highways" ~~(is this being updated still, is there a replacement document?, and the "Roadside Design Guide". These manuals are periodically updated and the most current update at any given time shall apply. Low Volume Standards. Do we need to refer to these anymore or just Rdwy stds?)~~
- B.A. ~~APPLICANT/OWNER~~ ~~APPLICANT/OWNER~~ – Shall mean the corporation, cooperative, company, firm, business, partnership, individual or individuals whose name and signature appear on a utility permit and to whom the permit is issued. The "Applicant/Owner" ~~applicant/owner~~<sup>2</sup> is presumed to have permanent care and maintenance of the utility.
- C. ~~APWA~~ Shall mean the American Public Works Association, Oregon Chapter, and the most recent edition of the Standard Specifications for Public Works Construction. ~~(Remove all references to APWA, refer to ODOT/APWA Std Specifications).~~
- D. ~~ASPHALT~~ Shall mean the hot mixture of asphaltic concrete (Class B or Class C mix) as defined in the most recent edition of the Oregon Department of Transportation Standard Specifications for Highway Construction, or APWA Standard Specifications for Public Works, used for the construction of driveways. Asphalt structures shall be constructed at the respective locations shown in Standard Drawing D-500 of the Clackamas County Roadway Standards handbook. These structures shall substantially conform to the lines, grades, and dimensions shown on the standard drawings. [rn1]
- E.B. BOARD – Shall mean the Board of Commissioners of Clackamas County.
- F.C. CABLE/WIRE – Shall mean any and all aerial pole lines and direct buried cables and conduit protected cable.
- G.D. CLEAR ZONE – Shall mean the area outside the traveled portions of the roadway that is available for safe use by errant vehicles, vehicles forced off the roadway, and pedestrians avoiding traffic when necessary. The clear zone may extend outside the right-of-way. See Clackamas County Roadway Standards. ~~The clear zone shall be clear of fixed objects under the criteria set out in the Clackamas County Roadway Standards.~~
- H. ~~CONCRETE~~ Shall mean Portland Cement Concrete (PCC) manufactured for the construction of walks, driveways, and surfacing. This concrete shall have design strength of 3300 psi in 28 days. ~~(3000 v. 3300) Walks, driveways, and surfacing shall be constructed in accordance with the most recent edition of the Oregon Department of Transportation Standard Specifications for Highway Construction or APWA Standard Specifications for Public Works Construction. Concrete structures shall be built in the locations shown in Standard Drawings D-300, D-500 and D-600 of the Clackamas County Roadway Standards handbook, and shall substantially conform to the lines, grades and dimensions shown on those standard drawings.~~
- I. ~~CONTROLLED DENSITY FILL~~ Shall mean a semi-fluid, self-compacting, plant mixed trench backfill (CDF) material that can result in a non-compressible, low strength, digable material with compressive strength ranging from 50 to 150 psi in 28 days.

- J.E. [rn2]COUNTY ROAD – See “ROAD/ROADWAYoad.”.
- K.F. COUNTY ROAD OFFICIALROAD OFFICIAL (“Road Official”) – As used in Chapter 368 and defined in ORS 368.001(2) shall refer to the Director of the Department of Transportation and DevelopmentDTD. Any authority granted to or act required or permitted by the County Road Official by statute may be exercised or done by the Director. Subject to approval by the County Administrator, the Director may adopt written policies designating employees of the departmentDTD that are authorized to act as the County Road Official for specified purposes. (Amended by Ord. 02-2009, 3/5/09)
- L.G. CULVERT – Shall mean storm sewer pipe used for conveying storm water within the road right-of-way, and meeting the following specifications of the Clackamas County Roadway Standards. ~~(Reference this definition in the Rdwy Stds):~~
1. ~~12, 15 and 18-inch inside diameter concrete pipe shall conform to the ASTM C 14 Class 3 standard (having Wall "B");~~
  2. ~~24, 30 and 36-inch inside diameter concrete pipe shall conform to the ASTM C 76 Class 4 standard (having Wall "B");~~
  3. ~~Twelve-inch metal culvert pipe shall be no less than No. 16-gauge coated corrugated steel pipe and shall conform with the requirements of AASHTO M 36, Types 1 and 2, with the protective bituminous coating conforming to the requirements of AASHTO Standard M 190. In addition, metal culvert shall have 3:1 sloped ends, or a concrete headwall, or an additional three feet at each end to prevent crushed and/or plugged ends.~~
  4. ~~High Density Polyethylene Pipe (HDPE) Double walled, smooth interior and corrugated exterior HDPE culvert pipe and associated HDPE fittings shall conform to AASHTO M294 and M252; ASTM 405 and 667. The minimum diameter shall be 12 inches. When pre-approved by the County Road Official, the installation shall conform to the manufacturer's recommendations. In addition, HDPE culvert shall have 3:1 sloped ends, a concrete headwall, or an additional three feet at each end to prevent crushed and/or plugged ends.~~
- M.H. [rn3]DEPARTMENTDTD – Shall mean the Clackamas County Department of Transportation and Development (DTD).
- N.I. ENTRY PERMIT – Shall mean that written permission granted by the County Road Official or designeeagent in accordance with ORS 374.305 to 374.325. This written permission allows an applicant to place, build, or construct an entry, approach road, structure, culvert, ditch, or other facility, thing, or appurtenance on the right of way, or substantially alter a facility, thing or appurtenance, or change the manner of using the entry or approach road.
- O.J. FACILITY – Shall mean any and all cables, wires, conduits, pipe lines, pedestals and/or related appurtenances placed on or beneath the ground and authorized by a County issued permit.
- P.K. FIXED OBJECT – Shall mean any natural or man-made object, including vegetation, that could potentially cause harm to an errant vehicle or its’ occupants. ”Vegetation” specifically includes trees greater than 6 inches in diameter, among other things.
- Q. ~~FRONTAGE IMPROVEMENTS – These enhancements made within public right-of-way that adjoins a subject property, including, but not limited to: upgrades to points of ingress and egress, curbs, culverts, base rock, asphalt or concrete road surfacing; utility relocation; grade changes of a roadway or utility; upgrades or installation of street lights, sidewalks, signing, signalization, and traffic capacity; and other related enhancements. These enhancements shall be consistent with the Standard Drawings incorporated within the Clackamas County Roadway Standards handbook and be in accordance with the Clackamas County Comprehensive Plan.~~[rn4]
- R.L. GATES – Shall mean any framework or structure that can be opened or closed, placed or installed in the right-of-way for the purpose of controlling or restricting the public travel.
- S.M. INTERSECTION SIGHT DISTANCE (ISD) – Shall mean the distance that a motorist can see when entering or exiting a County road, local access road, public road, private road or driveway. The ISD shall be determined according to Clackamas County Roadway Standards. See the Clackamas County Roadway Standards. Sight distance will depend upon Road Classification, and the relative location of the area to the Urban Growth Boundary (UGB).

- ~~F.N.~~ LOCAL ACCESS ROAD – See “ROAD/ROADWAY Road.”
- ~~O.~~ M-U-T-C-D: – Shall mean the Manual on Uniform Traffic Control Devices for Streets and Highways in its most recent Oregon -adopted edition and Oregon adopted supplements.
- ~~P.~~ ORS - Shall mean Oregon Revised Statutes.
- ~~U.Q.~~ PERSON – Shall mean and include individuals, cooperatives, corporations, associations, firms, partnerships, joint stock companies, trusts and estates, municipalities, and any other legal entities whatsoever.
- ~~V.R.~~ PIPE LINE – Shall mean any and all pipe lines, hydrants, valve boxes, manholes, and/or related appurtenances authorized by the issuance of a permit.
- ~~W.S.~~ POLE LINE – Shall mean any and all poles, wires, guys, anchors, and/or related appurtenances authorized by the issuance of a permit.
- ~~X.T.~~ PRIVATE ROADWAY – Shall mean a roadway on private property, maintained with private funds, generally considered to provide practical and legal access to more than one parcel of property.
- ~~Y.U.~~ ROAD/ROADWAY – Shall mean and include the entire right-of-way, along with all improvements, including but not limited to, the pavement surface, shoulders, driveway entrances, ditches, culverts and other drainage features, bridges and other structures, guard rails, curbs, sidewalks, traffic controls and all features necessary for use of the road. See ORS 368. For purposes of this chapter, all of the following are “roads”:
- ~~1.~~ PUBLIC ROADS: roadways over which the public has a right of use that is a matter of public record, but that has not been accepted for maintenance by Clackamas County. See ORS 368.
  - ~~2.~~ COUNTY ROADS: public roads or local access roads that have been designated as County roads pursuant to ORS 368.016. See ORS 368. Customarily, Clackamas County has accepted County roads for maintenance.
  - ~~3.~~ LOCAL ACCESS ROADS: Public roads that are subject to the exercise of jurisdiction by the County in the same manner as other County roads under ORS 368.001 and ORS 368.031. See ORS 368. The maintenance of local access roads shall not be funded by the County unless the Board expressly decides orders otherwise.
- ~~V.~~ ROAD OFFICIAL - See "COUNTY ROAD OFFICIAL".
- ~~W.~~ RIGHT-OF-WAY (ROW) – Shall mean a legal use or right of passage, given to the public, over a strip of ground under the jurisdiction of cCounty, state, or fFederal agencies.
- ~~Z.~~ (check ZDO definition)
- ~~ROAD USE REQUIREMENTS~~ – Shall mean and include ORS 374.305 – 374.340, ORS Chapter 368, any County road use ordinances, rules, regulations or standards, and any conditions of permits issued pursuant to those State statutes or County ordinances, rules or regulations.
- ~~AA.X.~~ TRAFFIC CONTROL DEVICE – See ORS 801.540~~xx~~.
- ~~BB.Y.~~ TRAIL – Shall mean any easement over land that is not part of a road right-of-way and does not provide motor vehicle access of the type provided by a road, but which permits travel between places. For the purpose of this chapter, a trail must be under the sole jurisdiction of Clackamas County, and must be an easement over which the public has a right of non motor -vehicular use. (A change in use from a road to a trail shall not change the designation of any easement as road right of way.)
- ~~CC.Z.~~ TRAVELED PORTION OF THE ROADWAY – Shall mean those areas used by and accessible to ~~motor vehicles and pedestrians~~, including paved shoulders and bike lanes facilities, and shall also include sidewalks or other pedestrian facilities. ~~-(Conflicts with definition in Rdwy Stds).~~
- ~~DD.AA.~~ UTILITY – Shall mean privately, publicly or cooperatively owned line, network, or system for communications, cable television, power, electricity, light, heat, gas, oil, crude products, potable water, surface water or storm water, steam, waste water not connected with roadway drainage, or any other similar commodity, including any fire or police signal system, or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this ordinance, the term includes those utility-type facilities owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes facilities and appurtenances used solely by the utility that are a part of its operation. ~~-(update rdwy stds def)~~

~~EE.BB.~~ UTILITY PERMIT – Shall mean the written permission granted by the ~~County~~ Road Official or ~~agent~~designee in accordance with ORS 374.305-~~to~~374.325. This written permission provides for the lawful construction of aerial pole lines, buried cables, pipe lines, and miscellaneous utility operations, and may include special permit provisions if deemed necessary by the ~~County~~ Road Official.

~~EE.CC.~~ VIOLATION – Shall mean an activity that does not comply with the Road Use requirements of this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2003, 1/23/03; Amended by Ord. 02-2009, 3/5/09]

### 7.03.030 Compliance

Every person shall comply with the requirements of this chapter in the location, construction, and alteration of any approach road, driveway, underground utility or any other facility, road use impediment, thing or appurtenance on or in the right-of-way of any County road, local access road, or public road under the jurisdiction within the boundaries of Clackamas County.

The Road Official or the ~~Board of County Commissioners~~Board may take any action deemed to safeguard the best interests of the traveling public, regardless of the provisions of this Chapter. This specifically includes the authority to erect gates when necessary to safeguard a public interest, without seeking a permit.

[Codified by Ord. 05-2000, 7/13/00; Amended Ord. 01-2003, 1/23/03]

### 7.03.040 Conflicting Requirements

The provisions of this chapter are minimum requirements. Where this chapter imposes a greater restriction than is imposed or required by other provisions of law, rules, regulations, resolutions, easements, covenants or other agreements between parties, the provisions of this chapter shall control. Where other provisions of law are more restrictive than this chapter, the more restrictive provision shall control.

[Codified by Ord. 05-2000, 7/13/00]

### 7.03.050 Violation as Nuisance

A violation of this chapter is hereby declared to be a public nuisance and shall continue to be a nuisance until the offending road use violation is brought into compliance with this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### 7.03.060 Issuance of Violation Notice~~Warnings~~

The ~~County~~ Road Official or ~~his~~ the Road Official's designee may issue violation~~warning~~ notices of alleged ~~violations~~. If issued, such ~~warning~~ notices shall give a brief description of the violation ~~alleged~~ and shall be served upon the person responsible for ~~accused of~~ the offense. The ~~warning~~ notice shall also contain:

- A. ~~The name of the County Department to contact regarding the violation,~~ The contact information for the County department and division issuing the violation,
- B. ~~The name of the person issuing the warning notice,~~
- C. ~~The date the violation~~warning was issued, and
- D. ~~A statement that failure to correct the alleged violation or to contact the appropriate County Department within a specified time period, may result in civil or Compliance Hearings Officer proceedings to abate the nuisance.~~

[Codified by Ord. 05-2000, 7/13/00]

### 7.03.070 Remedies

In addition to any other remedies provided by law, if the ~~alleged~~ violation has not been corrected within a minimum of ten<sup>[AM5]</sup> (10) days after a violation~~warning~~ notice is received, the County may refer the matter to the Compliance Hearings Officer for enforcement under the Compliance Hearings Officer Chapter or institute

injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, correct or remove the installation which is in violation of the requirements of this chapter. These remedies shall exist in addition to all other remedies provided by law.

[Codified by Ord. 05-2000, 7/13/00]

### 7.03.080 Penalties

Violation of the provisions of this chapter may be sanctioned in any manner provided for by law, including, but not limited to, ~~the following:~~

A. For violations of Sections 7.03.090 – 7.03.230, by imposing civil penalties in the amounts authorized under ORS 203.065(1).

For violations of Sections 7.03.240 – 7.03.290, by imposing civil penalties in an amount to be set by County Code Chapter 2.07 ~~the Board~~ and as determined by the Compliance Hearings Officer.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03]

### 7.03.090 Road Use Impediments – Prohibited Activity

A. Potential Hazards – No person shall allow any of the following things to exist on any portion of the road right-of-way that abuts property s/he owns or occupies, including sidewalks, if it could create a potential hazard in the opinion of the Road Official:

1. Earth;
2. Rock;
3. Vegetation;
4. Structures;
5. Objects;
6. Debris;

7. Anything that may cause a potential hazard to the public in their use of a sidewalk or other facility intended for pedestrians, including, but not limited to:

a. Vertical displacements on the surface greater than 1/2" or vertical displacements between 1/4" and 1/2" not beveled with a slope of 50 percent or less across the entire vertical displacement.

a-b. Cracks or disrepair.

B. Visual Impediments to Safe Road Use – No person shall allow any of the following things to exist on or in the road right-of-way, including intersecting corners, that abuts property s/he owns or occupies, or on property that abuts a road, or in the airspace above a road, if the thing obstructs the view necessary for safe operation of motor vehicles upon the road, or if it causes potential danger to the public that uses the road:

1. Trees;
2. Shrubs;
3. Hedges;
4. Any vegetation;
5. Projecting overhanging limbs of vegetation;
6. Temporary or permanent structures;
7. Fences;
8. Berms;
9. Natural or man-made objects.

The view necessary for safe use of the road by the public shall be Intersection Sight Distance (ISD) as described in the AASHTO and the Clackamas County Roadway Standards handbook.

C. ~~Visual Impediments that Compromise Clear Zone or ISD~~ – No person shall allow any fixed object to or visual impediment to exist within the road right-of-way, or on property that abuts a road that person

owns or occupies, or in the airspace above a road if it compromises the either-clear zone criteria of the Clackamas County Roadway Standards. ~~or intersection sight distance.~~

D. Obstruction of Official Traffic Control Device –

1. No person shall allow any of the following things to exist within the road right-of-way, ~~or on property that abuts a road that person owns or occupies, or in the airspace above a road~~ in a manner that wholly or partially obstructs the visibility of an official traffic control device from a distance of 200 feet:
  - a. Vegetation;
  - b. Overhanging or projecting limbs;
  - c. Permanent or temporary structures;
  - d. Fences;
  - e. Berms;
  - f. Natural or man-made objects.
2. When the traffic control device is a “~~Stop~~TOP” sign, a “Yield” sign, or a traffic control signal, no thing shall obstruct its visibility from the ~~stopping sight distance prescribed by the AASHTO or Clackamas County Roadway Standards handbook,~~ distance described in the Manual on Uniform Traffic Control DevicesMUTCD, if that ~~stopping sight~~ distance is greater than the 200 feet necessary for other traffic control devices under) D 1 of this subsection.

E. Flow of Water Impeding Safe Use of traveled portion of the roadway. Roads, Sidewalks or Bike Paths –No owner or lawful occupant of property abutting any road shall allow water to overflow, seep or otherwise discharge into the traveled portion of the roadway, ~~sidewalk or bike path~~ that abuts their property, if the water creates a nuisance condition or impedes the safe use of the road, ~~sidewalk or bike path~~traveled portion of the roadway. The source of the water flow shall be irrelevant to liability under this subsection.

F. Prohibition Against Blocking Drainage or Traveled Portion of thea Roadway – No person shall allow any soil, rock, earthen material, dirt, bark dust, compost or similar processed vegetative material to erode, flow, discharge or otherwise be placed or deposited in the traveled portion of ~~any road, sidewalk or bike path~~of the roadway, or to block any drainage system within the road right-of-way.

G. Regulation of Basketball Hoops, Skate Board Ramps & Cycle Ramps –

1. No person shall allow the following to exist on or in the road right-of-way, or on property abutting a road, if its placement encourages approach from, or use in conjunction with the road right-of-way:
  - a. Basketball hoop;
  - b. Skateboard ramp;
  - c. Cycle ramp;
  - d. Any other thing or structure capable of being used from the road right-of-way.
2. Notwithstanding the prohibition set forth above, a basketball hoop, backboard and supporting structure may be located on dead-end local residential streets and local residential streets having expected traffic volumes of less than 250 vehicles per day, if all of the following conditions apply:
  - a. The basketball hoop is no closer than 150 feet from any street intersection.
  - b. Sight distance to the basketball hoop for approaching vehicles must not be less than 150 feet.
  - c. No portion of the basketball hoop shall be located closer than 20 feet from an adjacent property line.
  - d. In no case shall court markings be placed on the roadway.
  - e. In no case shall the basketball hoop be used between the hours of 109 PM and 7 AM.

H. Regulations for Mail boxes, Newspaper Boxes, Other Receptacles – No person shall allow any mail box, newspaper box or other receptacle to exist on the road right-of-way unless it conforms to the safety standards outlined in the most recent editions of the AASHTO manuals-Roadside Design Guide, ~~or is approved by the Federal Highway Administration and the Oregon Department of Transportation.~~the AASHTO "A Guide For Erecting Mailboxes On Highways", the clear zone standards of the County



Roadway Standards, or the standards of the United States Postal Service.

- I. Regulations for Portable Storage Containers – No person shall allow the placement of a portable storage container within the traveled portion of the roadway or within the clear zone.
- J. Regulations for Roadside Memorials –
  1. A roadside memorial may be authorized pursuant to Clackamas County's Roadside Memorial policy;
  2. Unauthorized roadside memorials may be removed if:
    - a. The roadside memorial is a safety hazard in the opinion of the Road Official;
    - b. The roadside memorial creates a safety/operational/productivity issue for Transportation Maintenance personnel and/or equipment in the opinion of the Road Official, or;
    - c. The County receives a complaint regarding the unauthorized roadside memorial.
  3. If an unauthorized roadside memorial is to be removed, DTD will attempt to contact the person responsible for the roadside memorial. If contact is made with the person, 14 days will be provided to allow for removal. After a minimum of 14 days, DTD may remove the roadside memorial.

~~— Roadside memorials will be allowed through the Department's "Adopt a Road" program. A person may adopt a section of roadway for litter/debris removal with the use of "In Memory of xxxxxx" signage.~~

~~— Unauthorized roadside memorials will be removed if:~~

  - ~~— The roadside memorial is a safety hazard in the opinion of the Road Official;~~
  - ~~— The roadside memorial creates safety/operational/productivity issue for Transportation Maintenance personnel and/or equipment in the opinion of the Road Official;~~
  - ~~— The County receives a complaint regarding the unauthorized roadside memorial.~~
  4. If an unauthorized roadside memorial is to be removed, the Department will attempt to contact the family if they are able to identify who the family is. If contact is made with the family, 14 days will be provided to allow for removal. After a minimum of 14 days, the Department may remove the roadside memorial.
- K. Regulations for Written or Graphic Displays – No person shall post, paste, paint, brand or otherwise place or attach notices, signs, pictures, advertisements, cards, posters, bills, notices or any other form of written or graphic display to any building, fence, gate, bridge, tree, rock, board, structure, utility pole, traffic control device or its supporting structure, or anything whatever within the road right-of-way unless it is authorized under ORS 368.942—368.960.
- L. Regulations on Obstructing View by Vending or Advertising Merchandise – No person shall allow the following things to be present on a sidewalk, pedestrian way, bike path or road right-of-way, the traveled portion of the roadway or on property abutting a road, if it could obstruct the view of, or cause danger to, persons who use the road:
  1. Any vehicle that facilitates vending or merchandise sales;
  2. Any object or structure that facilitates vending or merchandise sales;
  3. Any object or structure that advertises, sells or offers merchandise for sale;
  4. Any utility trailer;
  5. Any recreational vehicle;
  6. Any mobile or modular home.
- M. Prohibition of Gates on Roads – ~~It is the policy of the Board of County Commissioners that all Public roads are open to the traveling public and should not be gated. Only under the most extraordinary circumstances will a gate be allowed. When extraordinary circumstances create an exception to the "no gates" policy, the Board's express preference will be for permitted gates to be unlocked.~~
  1. No person shall install or allow the presence of any gate that blocks access to a road right-of-way unless:
    - a. The person has made application to the Board, describing the reasons for construction of the proposed gate, and has paid the required application fee;

- b. The Board has held a public hearing, and met the notice requirements in ORS 368.086, to give interested parties an opportunity to describe their concerns regarding construction of the gate; and
  - c. The Board has approved the placement of the gate and issued a permit for the gate's construction pursuant to ORS 368.056.
2. Whenever the Board issues a permit for a gate that blocks access to a road right-of-way, the Board shall place the following conditions on the permit:
- a. Except under extraordinary circumstances or when necessary for the health, welfare and safety of the public, the gate shall not be locked in a way that prevents vehicle access by the traveling public on the road right-of-way;
  - b. If the road right-of-way has attained its public status due to ten years or more of adverse use under ORS 105.620, or ten years or more of uncontested public use under ORS 12.050, then the question of the road's status shall be considered in the public hearing on the gate permit, and a finding shall be made and written into the language of the permit that the road's public status has been clearly established and can no longer be contested; (This action shall fulfill the requirements of ORS 368.073(1); and ORS 368.096(2)(c).)
  - c. The permit shall be limited in duration and renewable in five-year increments. If any condition existing when a gate permit is granted or renewed changes during the five year permit term, the Board may evaluate whether to revoke the permit and require the gate to be removed prior to expiration of the term. At the time set for renewal of a gate permit, the requirements for a public hearing set forth in Section 7.03.090.N.1.b may be waived by the Road Official if there ~~is~~ are no record of objections ~~no controversy~~ surrounding the gate's presence or the permit renewal.
3. Whenever the Board issues a permit for a gate that blocks access to a road right-of-way, the Board may place the following conditions on the permit:
- a. Specifications regarding the method and means of construction of the gate;
  - b. A requirement that the person issued the permit shall bear all costs of construction and maintenance of the gate; and/or
  - c. Any other conditions the Board deems reasonable.

N. Road Official's Authority to Issue Revocable Permit – Pursuant to ORS ~~3274.305~~, the Road Official is authorized to make a case-by-case determination to allow structures, objects or other things to exist in public right-of-way, including sidewalks, so long as the things could not create a potential hazard or impediment. If the Road Official makes a determination to authorize such a thing, ~~s/he~~the Road Official may issue a revocable permit reflecting that revocable permission, and may impose any conditions s/he determines are necessary to protect the public interest. [Codified by Ord. 05-2000, Amended by Ord. 01-2003, 1/23/03]

### 7.03.095 Vacation Proceedings and Road Status Changes

- A. Vacation Proceedings.
- 1. Vacation of any public property listed in ORS 368.326 shall be carried out pursuant to ORS 368.326—368.366.
  - 2. Partial vacations of public property, with reservations of rights in the form of easements (utility, ingress/egress, etc.) shall also be carried out pursuant to ORS 368.326—368.366.
  - 3. A vacation of public property may eliminate rights of ~~vehicular~~ public access, but no vacation of public property shall be allowed if the vacation would deprive an owner of access to their property without their consent.
  - 4. In determining whether vacation of public property is in the public interest, the Board shall consider the following criteria:
    - a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;
    - b. Whether it is physically possible to build a road that meets contemporary standards over

- c. the existing terrain or right of way;
- d. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;
- e. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;
- f. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;
- g. Whether there are present and future likely benefits of the right-of-way to the traveling public;
- h. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;
- i. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and
- j. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

5. The Order issued pursuant to ORS 368.356 at the conclusion of any ~~v~~Vacation ~~p~~Proceeding shall not be a land use decision, but may be appealed by Writ of Review under ORS ~~Chapter 34.102~~.

**B. Road Status Changes.**

1. The Board has the discretion to determine that it is necessary to change the status of a County ~~r~~Road, ~~l~~Local ~~a~~Access ~~r~~Road, ~~p~~Public ~~r~~Road or ~~t~~Trail.
2. In order to change the status of any such right-of-way, the Board shall designate the proposed new status as a ~~l~~Local ~~a~~Access ~~r~~Road, ~~p~~Public ~~r~~Road, or ~~t~~Trail, and shall use the same procedure set forth in ORS 368.026 for withdrawal of County right-of-way status.
3. In determining whether to enter an ~~O~~Order changing the status of a right-of-way under this ~~s~~Subsection, the Board shall consider the following criteria:
  - a. County's cost of maintenance under existing status, given the general public benefit of such maintenance;
  - b. Existing or reasonable future use of property or bodies of water being accessed by subject road,
  - c. Impact to public facilities (e.g., public water supply) being served by subject road,
  - d. Existence of a long history of inappropriate use of the right-of-way, e.g., dumping of refuse/hazardous materials onto the right of way, trespassing onto or damaging of abutting property.
4. A change of status may temporarily or permanently eliminate rights of ~~vehicular~~ public access, but no change of status may deprive a recorded owner of access to their property. If a public right-of-way is to be changed into a private right-of-way, the Board Order shall follow ORS 368.326--368.366 and ensure that necessary rights of access are reserved through appropriate easements.

**C. Simultaneous Acceptance and Vacation of Roads.**

If the circumstances of a specific road project require both vacation of an existing right-of-way and acceptance of a new right of way, the vacation and acceptance may be consolidated for hearing before the Board when consolidation is likely to maximize the efficiency of the road project.

[Added by Ord. 01-2003, 1/23/03]

**7.03.099 Utilities' Use of County Right of Way**

**A. Designating Location of Utilities; Costs; Construction Approval.**

The Road Official has the authority to designate the location where lines, fixtures and facilities operated by Utilities may be located upon roads under Clackamas County's jurisdiction.

1. Except as provided in this Chapter, uUtilities shall not begin construction of a new facility or relocate an existing facility on County roads without doing the following things first:

- a. When the proposed work is more significant than routing service connections and ordinary maintenance, uUtilities must provide written notice to the Road Official, including ~~a map or sketch~~ plans and specifications of the proposed construction in the form and to the scale required by the Road Official; ~~or;~~
  - b. When the proposed work is routine routing of service connections and ordinary maintenance, uUtilities must provide telephone or other appropriate notice to the Road Official; and
  - c. No matter the scope or scale of the proposed work, uUtilities must first obtain the Road Official's approval of the proposed construction or relocation of an existing facility.
2. No advance approval shall be required when construction or relocation is necessitated by an emergency, but uUtilities shall give notice of work undertaken no later than the first workday following the emergency.
  3. The Road Official shall approve uUtilities work proposals unless s/he finds that the proposed construction or relocation is contrary to the public interest.

B. Changing the Designated Location of Utilities; Costs; Notice/Orders.

The Road Official has the authority to order the designated location of lines, fixtures and facilities operated by utilities to be changed, either temporarily or permanently, at any time the Road Official deems it expedient. The cost of any temporary or permanent relocation of any uUtility required by the Road Official shall be paid by the uUtility.

1. The Road Official shall notify uUtilities in writing of proposed changes in grade, contours or alignments of County roads or of proposed vacations of roads or parts of roads that require the removal, relocation or repair of uUtilities' facilities.
2. Upon receiving the notice described in 7.03.099(B)(1) above, uUtilities shall determine the estimated requirements for accomplishing the action directed by the Road Official, and provide those requirements to the Road Official within thirty (30) days.
3. Upon receiving the estimated requirements, the Road Official may schedule a pre-construction meeting with other affected uUtilities and contractors.
4. The Road Official shall send a second notice to the uUtilities, directing them to complete the removal, relocation or repair of their facilities within a specified time frame and consistent with the coordinated plan established with other affected uUtilities and contractors under this Chapter. This notice shall constitute an Order from the Road Official requiring relocation of the specified uUtility facilities.
5. If the Road Official determines that the work must occur on a different date from that previously discussed with a uUtility, then s/he shall give the uUtility written notice of the date change no less than thirty (30) days prior to the rescheduled date. This notice shall be sent by first class mail, postage prepaid. This notice shall be an aAmended Order of the Road Official requiring relocation of the specified uUtility facilities.

C. Remedy for Failure of Utilities to Remove, Relocate or Repair Facilities aAs Directed.

Should a uUtility fail to temporarily or permanently remove, relocate or repair the lines, fixtures or facilities operated by the uUtility as ordered by the Road Official under this section, the lines, fixtures or facilities shall automatically become a public nuisance, which the Road Official may abate in any expedient manner. The total costs attributable to the failure of the uUtility to act as ordered by the Road Official, including the costs of completing the work the uUtility should have done under the Order, shall be itemized and an invoice shall be sent to the responsible uUtility. All such costs shall be promptly repaid to the County by the uUtility.

D. Prohibition of Interference with Public Travel, Maintenance and Improvement.

F. Work done by uUtilities shall always be in accordance with state statutes, Clackamas County Roadway Standards, and with other specifications adopted by the County.

G. Utility work shall not endanger or interfere unduly with public travel on County roads, or with the maintenance and improvement of such roads by the County.

1. \_\_\_\_\_ Immediately following the opening of a road, uUtilities shall replace and restore the surface and grade to as good and safe a condition as it was in prior to opening.

H. Repair of defects in openings made by uUtilities shall be undertaken by uUtilities within six (6) hours from notice by the Road Official when such defects endanger the public, and within one week of notice in all other cases.

2. When trenching across more than one-travel lane of the roadway, no more than one-half (1/2) of the traveled portion is to be opened at any one time. The relevant installation shall be made, then the opened half shall be covered and secured with steel running plates or be completely back filled and compacted before opening the remaining half.
3. No closure of intersecting streets, roadways, driveway approaches or other access points will be permitted without review and approval by the Road Official.
4. Upon trenching, steel running plates or other satisfactory methods shall be used to maintain traffic. No more than two hundred and fifty (250) feet of longitudinal trench along the roadway shall be open at one time and no trench shall be left open overnight

E. Requirement for Periodic Inspections of Utility Openings.

Utilities shall conduct periodic inspections of openings they have made during the preceding twelve months to ensure compliance with the provisions of this section. If, after the notice described in 7.03.099(D), a uUtility fails to replace or restore any pavement or road surface opened by it, the Road Official may, after written notice and demand, cause the work to be done at the uUtility's expense. Upon receiving a statement of the costs, uUtility shall promptly reimburse the County. If legal action is necessary to collect these amounts, then uUtility shall pay all legal costs and reasonable attorney fees.

[Added by Ord. 01-2003, 1/23/03]

#### 7.03.100 Utility Placement Permits

- A. Application Requirements – Application for a permit to establish, place and operate utilities within the right-of-ways shall be made on the official permit application, available from the Department DTD. The applicant shall comply with the requirements of the Clackamas County Roadway Standards with regard to the permitting, design and construction of uUtilities. ~~permitting requirements of the Clackamas County Roadway Standards.~~
- ~~A. The following items must be submitted along with applications:~~
- ~~1. Verification of insurance as required under Section 7.03.130 of this Chapter;~~
  - ~~2. Performance Bond as required under Section 7.03.130 of this Chapter;~~
  - ~~3. Any drawings requested by the County Road Official to illustrate the work described in the permit application;~~
  - ~~4. An application drawing that clearly depicts protection devices, such as guardrails or bollards, for supplemental review by the County Traffic Engineer to ensure compliance with the clear zone criteria in the Clackamas County Roadway Standards handbook.~~
- ~~B. Design Responsibility – The utility company shall be responsible for the design of the utility being proposed. The design responsibility shall include:~~
- ~~1. Advanced coordination with other users of the roadway to ensure the compatibility of the new utility placement and shared uses;~~
  - ~~2. Construction and location in compliance with this chapter, in addition to maintenance of the proposed utility and its appurtenances;~~
  - ~~3. Provisions for public safety and accident prevention for the service life of the installation.~~
- ~~C. Permit Review Objectives – In reviewing permit applications, the County Road Official or his designee may consider the following objectives:~~
- ~~1. Location – where it is reasonable to construct, maintain and provide for the shared uses of the right-of-way;~~
  - ~~2. Methods – particularly the manner in which the utility is to be installed;~~
  - ~~3. Traffic Safety – which must include measures to accommodate the utility and to preserve and/or enhance traffic safety, operation and maintenance of the roadway system;~~

4. ~~Roadway Integrity~~ including sustaining the structural integrity of the roadway, bridge or other structure;
5. ~~Use and Appearance~~ specifically the use and appearance of the right-of-way;
6. ~~Public Safety~~ considering daytime or extended roadway closure, when the Applicant/Owner demonstrates that it is in the interest of the traveling public or necessary for the safety of the construction/installation workers. Closures must be in compliance with procedures for notifying public agencies and emergency service providers and must be finalized with the County Road Official in advance of the actual closure.

D.B. [m6] ~~Emergency Repair Work Rules~~ – Emergency repair work done by the Applicant/Owner applicant/owner may proceed as needed if the Road Official is properly notified when traffic control is required. Proper notification is accomplished in the following ways:

1. During work hours – telephone contact with the ~~Department~~ DTD;
2. After work hours – telephone contact with the County's central dispatch office.

Permits for emergency repairs shall be obtained no later than the first business day following commencement of the work.

E. ~~Possible Requirements for Facilitating Site Review~~ – To facilitate site review, the County Road Official may require the Applicant/Owner to place markers such as lath, stakes, paint, or other means of identification at the locations where the Applicant/Owner proposes to work.

F. ~~Signatures Required on Permits~~ – If an installation contractor is to be used. Then both the Applicant/Owner and the selected contractor must sign the permit.

G. ~~Assigning Permit Rights~~ – The privileges granted and obligations created by virtue of the permit issued shall be binding not only upon the Applicant/Owner, but also upon the successors and assigns of the Applicant/Owner. The Applicant/Owner shall give the County Road Official written notice of any such assignment or transfer within a reasonable time not to exceed 90 days after assignment.

H. ~~Importance of Truthfully Reporting All Facts Material to Application~~ – The Applicant/Owner shall be solely responsible for providing correct and complete information required for the permit. If the County Road Official determines that the Applicant/Owner misrepresented, misstated, or omitted any fact which is material to assessment of the utility or to the operation's impact upon traffic safety, convenience, and/or the legal property rights of any person (including the County), this will result in denial or revocation of the permit. At any time during the application process, or the period during which the permit is valid, the County Road Official may require the Applicant/Owner to provide additional safeguards to protect the convenience and rights of the traveling public and persons (including the County). The Applicant/Owner shall pay all costs for such safeguards.

[Codified by Ord. 05-2000, 7/13/00] |

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### 7.03.110 Effective Period of Utility Placement Permits

- A. Effective unless Revoked – Permits for utility occupation and operations shall be in effect upon issuance indefinitely, or until revoked. Revocation will occur only under the following circumstances:
  1. By mutual consent of the County and the aApplicant/oOwner or his successor or assign;
  2. By order of the Board or the County Road Official, if the aApplicant/oOwner or his successor or assign fails to abide by the terms and conditions of the permit;
  3. By operation of law.
- B. Effect of Violations of Permit Terms or Conditions – Any violation of the conditions or terms of the permit by the aApplicant/oOwner shall be cause to suspend, modify, annul and forfeit any and all rights acquired by the aApplicant/oOwner under the terms stated in the permit or these provisions. The aApplicant/oOwner acquires no rights in the road right-of-ways through obtaining a permit, and is presumed to have waived any claims for damages or compensation as a result of revocation of the permit as described in subsection A of this Section.
- C. Rules Regarding Commencement of Installation and Placement of Utility – If the aApplicant/oOwner fails to commence installation and placement of the utility by the starting date specified on the permit, the permit shall be deemed null and void, and all privileges there under shall be forfeited, unless a notice

and acknowledgment of a different start date is confirmed with the County Road Official. Change of a starting date may require a revision to the conditions of approval, which must be set out in special provisions.

- D. Commencement of Surety Repair Period – Upon initial completion of the permitted installation and restoration repairs, the ~~a~~Applicant/~~o~~Owner shall notify the County Road Official. A ~~D~~department inspection will be performed within 30 days of notification. If necessary, a corrective work list will be generated. Following a County Road Official inspection that results in a finding that the installation and the repaired right-of-way are within County standards, a three year surety repair period shall begin, as set out in Section 7.03.130 of this Chapter.

[Codified by Ord. 05-2000, 7/13/00]

### 7.03.120 Liability, Control and Responsibility for Utilities

- A. Necessity for Additional Permits – The ~~Applicant/Owner~~applicant/owner shall be responsible for securing any other permits necessary or required from cities, counties, corporations, districts, state and federal governments or individuals.
- B. Restoration or Repair of Roadway – If it is evident to the County Road Official that the physical character of the roadway has been changed, degraded or damaged by the ~~a~~Applicant/~~o~~Owner, the ~~a~~Applicant/~~o~~Owner shall restore or repair the damage in compliance with the ~~specifications of this chapter~~Clackamas County Roadway Standards, whether that damage is discovered at the time of utility installation or at a later date. If the ~~a~~Applicant/~~o~~Owner fails to satisfactorily restore or repair the roadway, the County Road Official may employ enforcement provisions of this Ordinance or make the necessary restoration or repairs using ~~c~~Contractor or County forces. The ~~a~~Applicant/~~o~~Owner under the terms set out in Section 7.03.200 shall pay all costs incurred by the County under these circumstances.
- C. Responsibility for Relocating or Adjusting Pre-Existing Utilities – The ~~a~~Applicant/~~o~~Owner shall be responsible for relocating or adjusting any other utilities located on County right-of-ways or other right-of-ways under the jurisdiction of the County if this is required to accommodate the utility or operation applied for. Construction of the utility or conduct of an operation by the ~~a~~Applicant/~~o~~Owner, its agent or ~~c~~Contractor, will be permitted only after the ~~a~~Applicant/~~o~~Owner has furnished evidence to the County Road Official that satisfactory arrangements for such relocations or adjustments have been made with the owners of the other affected utilities.
- D. Notifying Abutting Property Owners about Impact of Utility or Utility Work – Mailboxes, lawns, landscapes and rain drain connections are considered the possession of abutting property owners or lawful occupants. The ~~a~~Applicant/~~o~~Owner shall be responsible for notifying the abutting property owners and restoring or replacing any materials that are disturbed or removed because of utility construction, maintenance, or operation. The ~~a~~Applicant/~~o~~Owner shall accomplish ~~r~~Restoration or replacement of materials as expediently as possible. This responsibility continues through the life of the permit. The surrounding area shall always be restored to a comparable or better condition from that which it was in prior to commencement of utility work.
- E. Liability for Injury or Damage to a Utility Covered by a Permit – The County, ~~DTD~~the department, or employees thereof, shall not be responsible or liable for injury or damage that may occur to a utility covered by a permit, if caused by substandard installations, misallocated, non-located or non-locatable utilities, by reason of County maintenance and construction operations, or by motorist or road user operations, or County ~~c~~Contractor or other ~~p~~Permittee operations.
- F. ~~Necessity to Protect Public and Roadway – The Applicant/Owner shall employ any and all means, methods, techniques, or sequences in performing the operations authorized by the permit that the County Road Official deems necessary, and that also comply with the requirements of any other regulatory agencies with authority, in order to properly protect the public from injury and the roadway from damage.~~
- G. ~~Necessity for Approved Traffic Control Plan – During any construction or maintenance performed under the permit provisions the work area shall be protected with sufficient traffic controls in accordance with the current M.U.T.C.D. or amended or supplemented by the County Road Official. The~~

~~Applicant/Owner shall furnish necessary signs unless otherwise specified in the permit.~~

~~Applicant's/Owner's traffic control plan shall be reviewed and approved by the department before work begins. Applicant/Owner shall allow two weeks for this review.~~

~~H. Inspections and Compliance Checks — To insure compliance with the terms and conditions of the permit, the County Road Official may perform random inspections of the work being done, check compliance with the terms of the permit, and require the Applicant/Owner to correct all deviations from those terms and conditions. When increased inspection is deemed necessary by the County Road Official, additional costs shall be paid by the Applicant/Owner under the terms outlined in Section 7.03.200.~~

~~Examples of special circumstances that may trigger increased inspection include:~~

- ~~1. Extended hours of work/operation;~~
- ~~2. Failure to comply with permit requirements;~~
- ~~3. High traffic volumes in the vicinity of the work/operation; or~~
- ~~4. Special accesses requirements for the work/operation.~~

~~I.F. County Supervision Shall Not Impact Liability of Applicant/Owner~~ applicant/owner – Any supervision or control exercised by County personnel shall in no way relieve the aApplicant/oOwner of any duty or responsibility to the general public, nor shall such supervision or control relieve the aApplicant/oOwner from any liability for loss, damage or injury to persons or property as provided in this Section.

~~J. Discreet Placement Required for Above Ground Appurtenances — All above ground appurtenances shall be located where they do not create undue interference or a hazard to the free movement of normal roadway traffic, whether vehicular, bicycle or pedestrian. Utility appurtenances shall not be located in areas of restricted sight distance, i.e., on sharp curves and steep grades. They shall not interfere with the proper function of traffic control signs, signals, lighting or other devices that affect traffic operation. The County Road Official shall approve any revisions to historic utility locations.~~

~~K.G. Recorded and Unrecorded Public and Private Rights To be Honored, Regardless of Board Consent — The aApplicant/oOwner is subject to all existing public and private rights recorded and unrecorded within and appurtenant to the right-of-way of the roads. Consent of the Board for installation and operation of permitted utilities is only to the extent that the Board has legal authority to grant such consent. The expressed understanding is that the Board is granting said consent free of charge to the aApplicant/oOwner as a mere license, and the aApplicant/oOwner shall assume the entire responsibility incidental thereto.~~

[Codified by Ord. 05-2000, 7/13/00]

### **7.03.130 Required Insurance and Performance Bond for Utility Work**

- A. Comprehensive General Liability Insurance Requirement – The aApplicant/oOwner or its cContractor shall furnish a certificate of insurance for comprehensive general liability insurance to the County Road Official, in an amount established by Clackamas the County's Risk Management Office Division. The insurance shall be for a combined single limit for personal injury and property damage for the protection of the County, its officers, commissioners and employees. It shall protect against liability for damages of any nature caused by the conduct or operation of the aApplicant/oOwner, its agents, subcontractors or employees, resulting in personal injury, bodily injury, death, or damage to property, including loss of use thereof, in any way related to the physical location, installation, construction, maintenance, repair, operation or use of said utility, repair, and restoration of the roadway, or in conducting any operation of this ordinance. The aApplicant/oOwner may submit evidence of insurance coverage annually in lieu of individual submissions for each permit.
- B. Acceptable Substitutions – A utility company, cooperative or municipal authority may be relieved of the obligation of submitting a certificate of insurance if it submits satisfactory evidence that it is insured, or has adequate provisions for self-insurance, in accordance with the requirements of this section.
- C. Indemnification Requirement – Both the aApplicant/oOwner and its cContractor shall indemnify, save harmless and defend the County, its officers, commissioners and employees from and against all claims and action, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of



the aApplicant/oOwner, any subcontractor, anyone directly or indirectly employed thereby or anyone for whose acts they may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

- D. Additional Assurances Required – The insurance shall include the County as an additional insured and refer to and support the aApplicant's/oOwner's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide thirty (30) days written notice to the County in the event of cancellation, non-renewal, or material change, and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance.
- E. Performance Bond Requirements – The following rules apply to the pPerformance bBond requirement set out in Section 7.034.100 A 2:
1. The applicant/owner's contractor shall furnish a performance bond and a minimum of \$1000 cash deposit ~~The Applicant/Owner, or its Contractor, shall furnish a Performance Bond and a minimum \$1,000.00 cash deposit~~ for the period of time necessary to construct or install a utility or conduct an operation authorized by permit through a minimum three yearspecified period of time determined by the DepartmentDTD following surface repair.;
  2. The dollar amount assigned to the pPerformance bBond shall equal the amount noted in the permit special provisions, and shall be based upon the estimated cost for the trench and surface repairs.
  3. Bonds furnished must be written by a surety company duly qualified and licensed to do business in the State of Oregon, upon a form provided by ~~the DepartmentDTD~~, certifying bBond limits as set out in the permit's special provisions.
  4. No work shall be commenced under the permit until the pPerformance bBond and cash deposit has been submitted to and received by ~~the DepartmentDTD~~.
  5. In lieu of furnishing a cash deposit and/or a pPerformance bBond, the aApplicant/oOwner, or its cContractor, may file an "sSecurity aAgreementAssignment Agreement"<sup>22</sup> form securing their performance through assignment of a savings account kept in a reputable savings institution, in an amount equal to the amount required in the permit's special provisions. The Assignment sSecurity aAgreement shall be on a form provided by ~~the DepartmentDTD~~ and shall be returned for review and acceptance.
  6. A pPublic uUtility cCompany or municipal authority may be relieved of the pPerformance bBond and cash deposit requirements.
- F. Rules for Retaining and Releasing Bonds and Cash Deposits – When the aApplicant/oOwner advises that all work set out in the permit has been completed and verified by ~~Department DTD~~ inspection, all bonds and cash deposits shall be held and shall remain in full force and effect for a three year surety repair period. At the end of this period, the ~~County Road Official~~ shall cause the release and/or refund of all bonds, cash deposits, or other sureties to the provider after a ~~Department DTD~~ inspection confirms satisfactory surface restoration. If ~~the Department DTD~~ incurs costs to achieve satisfactory surface restoration, those costs will be deducted from the surety bond or cash deposit prior to release or refund of the remainder.

[Codified by Ord. 05-2000, 7/13/00]

#### ~~7.03.140~~ — ~~Traffic Control In Association with Utility Work~~

- A. ~~Required Safety Devices and Protections for the Public~~ — ~~During the installation, construction, relocation, repair, maintenance and removal of utilities connected with the permit, the Applicant/Owner shall at all times ensure the presence of such workers, tools and materials, flaggers, barricades and other safety devices as may be necessary to properly protect bicyclists/pedestrians, construction personnel and vehicular traffic upon the roadway, and to warn and safeguard the public against injury or damage resulting from the Applicant's/Owner's operations.~~
- B. ~~Protection of Work Area under MUTCD~~ — ~~During any construction or maintenance performed under the permit, the work area shall be protected in accordance with the current M.U.T.C.D. or as amended by special provisions. The Applicant/Owner shall furnish necessary signs and flaggers unless otherwise~~