

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Repealing the Public Works General Provisions Ordinance No. 558 and Replacing It With A New Public Works General Provisions Ordinance, and Declaring an Emergency)))) ORDINANCE 763

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on March 9, 2005, Commissioners Mary P. Stern, Leslie Lewis, and Kathy George being present.

IT APPEARING TO THE BOARD that the Yamhill County Public Works General Provisions Ordinance is obsolescent and in need of updating to become current with existing law and policy; NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the Yamhill County Public Works General Provisions Ordinance No. 558 (as amended by Ordinance 574) is hereby repealed and replaced with the new Yamhill County Public Works General Provisions Ordinance No. 763, attached and hereby incorporated by this reference. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE this 9th day of March, 2005, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

Jan Coleman County Clerk



Mary P. Stern Chair MARY P. STERN

By Anne Britt Deputy Anne Britt

Leslie Lewis Commissioner LESLIE LEWIS

APPROVED AS TO FORM

Kathy George Commissioner KATHY GEORGE

Rick Sanai, Assistant County Counsel

YAMHILL COUNTY ORDINANCE 763

GENERAL PROVISIONS

FOR USE, CONSTRUCTION AND INSTALLATIONS IN

YAMHILL COUNTY PUBLIC ROAD RIGHTS OF WAY

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Section 1Purpose and Policy

The purpose of these regulations is to establish the procedures for construction and activities conducted in the Public Rights-Of-Way under Yamhill County jurisdiction. [ORS 203.010, 368.011, 374.305-374.320 & 30.315]

Section 2Definitions

- 2.1 **"Applicant"** is the company, corporation, agency, organization, or individual conducting or financing a utility activity or other regulated activity covered by these regulations.
- 2.2 **"Clear Zone"** is an unobstructed area that is available for errant vehicle recovery.
- 2.3 **"County"** is Yamhill County.
- 2.4 **"County Road Official"** or **"Public Works Administrator"** means the public works director, road master, engineer, road supervisor, or other administrative officer designated by the county governing body as being responsible for administration of road activities of the county.
- 2.5 **"Emergency"** is a condition which either causes a loss of utility service to a customer, or which causes an unsafe or unhealthy condition to the public.
- 2.6 **"Location"** is the placement of any utility facility described by depth, height, width, length, parallel distance from centerline or station and angle of crossing the county or public rights-of-way.
- 2.7 **"Maintenance Period"** is the length of time that an applicant is responsible to repair or maintain construction of a regulated activity covered by a permit, bond and or bond agreement. The time frame starts when the County acknowledges final acceptance of the project and will last for a period of one year.
- 2.8 **"Public Road"** is a road within Yamhill County over which the public has a right of use that is a matter of public record, but which is not a city street, state or federal highway.
- 2.9 **"Regulated Activity"** means any construction, maintenance, repair, replacement, removal, or use of any county public road rights-of-way, including but not limited to occupation and performance of work upon a county road, public road, approach road and access road.
- 2.10 **"Special Provisions"** includes specifications or requirements attached to or contained in the permit issued under these regulations.
- 2.11 **"Utility Activity"** is any installation, maintenance, repair, replacement, removal or use of any utility facility.
- 2.12 **"Utility Facility"** or **"Facility"** is any pole line, buried cable, pipe line or any other similar facility located within the right-of-way of any public road. "Utility Facility" or "Facility" also includes a non-utility facility, excavation which is greater than 12 inches in depth and 10 feet in length, or other improvements which County allows within the public road right-of-way.

Section 3**Permit Required; Application**

3.1 A permit application is required for every utility facility and other regulated activity. Any utility or other regulated activity within Yamhill County rights-of-way requires an approved permit prior to commencement of the work. Applicant must contact Yamhill County Public Works by 7:00 a.m. to schedule same day inspections of projects. [ORS 374.305, 374.307, 374.310,]

3.2 Applicant shall submit with the permit application, plans showing in detail the location of the proposed facility or operations as described in the project description. Two (2) prints of the plans are required. The Department of Public Works will make its best efforts to take final action on an application for a permit within 5 working days after the application is deemed complete, provided that the decision is wholly within the authority and control of the department.

3.3 The permit application will be reviewed by a public works administrator. The County road official will notify the applicant of any revisions needed to the plan and of the amount, if any, of the bond required for the permit. Upon receipt of the revised application (if required), the bond (if required), bond agreement (if required) and a certificate of insurance (if required), the permit will be issued to applicant.

3.4 Any violation of a permit (and/or any of its conditions) shall be a Class "A" violation pursuant to ORS 153.025. Failure to give the Public Works Department notice of start of construction is also a Class "A" violation. Permit violations may result in the revocation of the permit and/or the violator being cited into Yamhill County Circuit Court. Penalties may include fines up to \$720 for each and every day in violation of the permit, stop-work and/or removal orders, injunctive relief, and any other remedy allowed by law.

3.5 No person, firm, corporation, or other entity shall engage in or procure, aid or abet any other person to engage in any conduct or activity for which a permit, certificate, label or other formal authorization is required by any specialty code, statute, ordinance, or county-issued permit or other regulation without first having obtained such permit, certificate, label or other formal authorization. Any such conduct shall be a Class "A" violation pursuant to ORS 153.025. Penalties may include fines up to \$720 for each and every day in violation of the permit, stop-work and/or removal orders, injunctive relief, and any other remedy allowed by law.

Section 4**Liability**

Applicant shall indemnify and hold harmless the County, its officers, employees or agents against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature, including attorneys fees, which may result from any injury to or the death of any persons or from the loss of or damages to property of any kind or nature, including the road and bridges, property or equipment used or owned by the County Public Works Department, and facilities which may now or may hereafter occupy the rights-of-way of the said road, when such injury, death, loss or damage arises out of any utility activity or other regulated activity covered or authorized by the permit.

Section 5**Insurance**

5.1 Applicant or applicant's contractor shall obtain and carry, for the period of time required to complete installation of the facilities authorized by permit, a liability and property damage insurance policy providing coverage for all of the liabilities of these regulations. Liability coverage shall include repair and restoration of the road facilities, and shall be in effect for future periods of time when operations are performed involving the repair, relocation, or removal of facilities authorized by the permit. The policy shall include Yamhill County as additional named insured, and County's officers, agents, and employees for personal injury to any officers, agents, and employees of County, or damage to any of its property or their property. The policy minimum dollar amounts of liability coverage shall be as specified in ORS 30.270. An insurance company duly authorized and licensed to do business in the State of Oregon shall issue the policy. A copy of all policies or an insurance certificate evidencing coverage shall be submitted to the public works administrator.

5.2 Applicant shall be exempt from providing evidence of insurance with each permit application if applicant has on file with the County an annual certificate of insurance providing coverage for all activities of the permit holder. Liability limits and coverage shall be the same as for the individual permit insurance coverage.

Section 6**Bond**

6.1 Applicant may be required to furnish a bond to insure final acceptance of construction and maintenance period. The bond shall be in the amount specified in the Special Provisions of the permit. If a bond is furnished, it must be written by a surety company duly qualified and licensed to do business in the State of Oregon and in a form satisfactory to the public works administrator.

6.2 A cashier's check or bond agreement may be submitted to County in lieu of a bond.

6.3 Applicant will not be required to furnish a bond if both of the following conditions are met:

A. County has no past history of difficulties in obtaining compliance from applicant for activities associated with previous permits.

B. County has on file at least five (5) permits that have had the installation, including repair and restoration of the road facilities completed.

Section 7**Effective Period of Permit**

7.1 The permit shall be in effect for an indefinite period of time from the date of issue, except:

- (a) When the Special Provisions provide otherwise.
- (b) When the permit has been deemed void under the 180-day rule in Section 7.5
- (c) When the permit has been revoked by mutual consent of the department of public works and the permittee.
- (d) When the permit has been revoked by the County Board for failure of the applicant to

abide by the terms and conditions of the permit.

- (e) When the permit has been revoked by operation of law.
- (f) When the utility facility for which the permit was issued is removed from operation.

7.2 Failure of applicant to abide by any of the terms and conditions of the permit, these regulations, or any applicable law shall be sufficient cause for revocation of the permit. Cancellation of the permit may be caused without prior notice and shall be effective upon mailing of a notice of cancellation.

7.3 The permit and the privileges granted shall not be sold, assigned or in any manner transferred to any third party without the prior written consent of the public works administrator. In the event that such a sale, assignment, or transfer is made without prior written consent, the permit shall become null and void.

7.4 Applicant may have joint use agreements with other utility companies for use of the same utility facility. A permit is required for each utility company, which is party to the joint use agreement.

7.5 If applicant fails to begin installation of the utility facility or complete construction of the improvements covered by the permit within one hundred eighty (180) days from the date the permit is issued, the permit shall become null and void with all privileges forfeited, unless a written extension of time is obtained from the public works administrator.

Section 8 **Other Agencies and Utilities**

Nothing in this permit is intended to grant rights or to imply approval in areas not falling within the authority and jurisdiction of Yamhill County. It is the responsibility of applicant to determine the need for and to obtain such licenses, permits or other form of approval that may be required from other city, county, state or federal agencies. It is also the responsibility of applicant to determine the location of other existing utilities within the road rights-of-way prior to excavation.

Section 9 **Allocation of Costs**

The entire cost of the regulated activity or operations authorized by the permit shall be paid by applicant.

Section 10 **Construction Details**

10.1 No person shall start a utility or other regulated activity requiring a permit, as required in Section 3, without first obtaining a permit in accordance with these regulations. A complete copy of the approved permit and construction plans shall be on site during actual construction.

10.2 No person shall start any utility or other regulated activity, as required in Section 3, without advanced scheduling for an inspection.

10.3 Applicant's completed facility shall be in conformance with the plans referred to in the approved permit. The County public works administrator shall be informed of any changes in the construction from approved plans. County may require any construction that substantially deviates from the plans to be changed, if approval for the change was not obtained prior to the construction. Construction plans shall not be changed without prior approval from the original design source, developer/owner and all permitting agencies.

10.4 All work authorized by the permit shall be done in a neat and workmanlike manner. The details of construction shall conform to the applicable rules and regulations of all federal, state, city and county agencies.

10.5 No trench shall be excavated with a top width in excess of twenty-four (24) inches more than the outside diameter of the pipe, conduit or cable or other facility being installed or maintained, except for tie-in holes.

10.6 No trench shall be left open or uncovered overnight without prior written authorization from County and all safety requirements being met.

10.7 Unless exempted in the Special Provisions, the diameter of the bored holes under roadways shall not be more than one (1) inch larger than the outside diameter of the pipe or conduit fittings to be placed therein.

10.8 Unless exempted in the Special Provisions, trenching or tunneling shall be no nearer than three (3) feet of either edge of the traveled surfaced portion of the road.

10.9 All debris, refuse, and waste of all kinds which may have accumulated upon the road rights-of-way by reason of the operations of applicant shall be removed immediately upon completion of the operations. The road rights-of-way must be restored as close as reasonably possible to its prior condition. All ditch lines disturbed by work performed under this permit must be restored to original condition or better and shall allow water to flow unrestricted. The ditch contour should be constructed with a minimum of 2:1 side slope. [ORS 368.251, 368.256]

10.10 County may take corrective actions to restore the roadway and/or road rights-of-way if the work is not being done in compliance with these construction details. County will charge applicant for all related costs. Prior to taking corrective actions, County will provide reasonable notice to the applicant and give applicant an opportunity to correct the problem. In case of a hazardous condition, County may take corrective action without prior notice to applicant. County may order the construction removed, repaired or maintained within 24 hours of notice. If the hazard is not removed within the site time, the County will recover the expense from the applicant. [ORS 374.320, 758.010]

10.11 Applicant shall be responsible for any and all survey monuments damaged or destroyed by activities by applicant or applicant's subcontractor(s). Applicant shall, in compliance with Oregon Revised Statutes, replace any and all survey monuments so damaged or destroyed within 90 days of notification of the damage or destruction. [ORS 209.150]

10.12 New above ground utility facilities shall be located outside the clear zone according to the AASHTO roadside design guide.

10.13 In roadbed, live loading zone and shoulder areas, cover shall be a minimum 36" inches of compacted ¾"-0 crushed rock or CDF (controlled density fill) as specified by the County. Ditch area excavation backfill requirements will be specified by the public works administrator. All backfill shall use approved materials, installation and compaction procedures, and be guaranteed by the applicant for a maintenance period of one year.

10.14 A tracer wire including surface termination shall be installed with all nonmetallic buried utility facilities. The physical location of the termination points shall be referenced on the construction drawings. Should the actual location differ from the design location, an as-built drawing shall be submitted to the public works administrator.

10.15 It is the responsibility of the applicant to determine the width and location of the public rights-of-way as they pertain to the regulated activity. It is the responsibility of the applicant to insure that all facilities installed and maintained under the provisions of this permit are within the public road right-of-way as applied for in the permit.

Section 11

Roadway Crossings

11.1 Special permission is required in the Special Provisions for open cutting of the paved or surfaced portion of the road.

11.2 Trench edges in paved areas shall be sawed or cut to neat lines by methods satisfactory to the public works administrator prior to breaking the pavement slab.

11.3 County reserves the right to specify materials to be used for backfill under the roadway in the special provisions. Back-fill under all roadways shall be thoroughly compacted to 95% of AASHTO T-99 proctor.

11.4 Pavement restoration shall be made according to specifications of the special provisions and street cut detail.

11.5 County will require at least a temporary pavement cold patch on all paved or oiled roads. Temporary patching shall be completed as soon as possible within a reasonable period of time after the trench has been backfilled. Applicant shall maintain the trenched area until permanent pavement patching is completed. Unless otherwise specified in the special provisions, permanent pavement patching shall be completed within two weeks after pavement and patching material is available for purchase from a local commercial hot asphalt plant.

11.6 During the maintenance period, the applicant shall repair any patches, which become settled, cracked, broken, or are otherwise faulty, whether caused as a direct result of poor materials or workmanship involved with the trench, its backfill, or restoration of the road base and or pavement.

Section 12**Traffic Control**

12.1 During the course of any utility or other regulated activity including any subsequent repair, removal, or relocation thereof, applicant shall at all times maintain such flagging personnel, signs, lights, flares, barricades and other safety devices as specified in the ODOT/Oregon OSHA "Short-Term Traffic Control Handbook". Where the "Handbook" indicates engineering judgment is required to establish the specific requirements for traffic control, the County public works administrator's decision shall be final. Applicant shall maintain all signs, lights, flares, barricades, and other safety devices during nonworking hours, and the utilities administrator shall be furnished the telephone number of the person who is responsible for their maintenance. [ORS 810.200, 184.619]

12.2 Applicant shall conduct operations to minimize interference with or interruption of traffic along the road.

12.3 Closure of roadways, intersecting streets, road approaches or other access points for more than ten (10) minutes will require a plan for satisfactory control or re-routing of routine and emergency traffic that has been reviewed and approved by the public works administrator.

12.4 If an emergency threat to the traveling public exists due to a utility or other regulated activity, County may, without prior notice to applicant, take corrective actions to protect the public. County will charge applicant for all related costs. County will notify applicant of any corrective actions taken as soon as practicable following the emergency. [ORS 374.307(2)(a)&(b)]

Section 13**Emergency Maintenance and Repairs**

13.1 In case of an emergency, the provisions of this section supersede the provisions of the other sections of these regulations.

13.2 In case of an emergency, applicant may begin work on the facility or modify previously permitted facilities prior to receipt of a permit. Applicant shall notify the County public works administrator as soon as possible of the work in process. Following completion of the emergency work, applicant shall submit a permit application for any new or expanded installation. County reserves the right to require changes to any utility facilities installed during an emergency, at no cost to County.

13.3 In case of an emergency, applicant may trench across or into a roadway without prior notice to County. Permanent back fill and patching requirements are to be made according to specifications as specified in section 11 for roadway crossings. Applicant shall notify County as soon as possible of the work in progress.

13.4 In case of an emergency, applicant shall notify the Yamhill County Sheriff's Office of any need to close any roadway. Unless permission to close the road is specifically denied by County, the road may then be closed by applicant.

13.5 In case of an emergency, if applicant does not complete emergency work required under this section to protect the traveling public within a reasonable period of time, then County may undertake

to effect the emergency work and charge the permittee or other responsible parties for the expenses incurred by County.

Section 14

Inspection

14.1 To insure compliance with the terms and conditions of the permit and plans, County may designate an inspector to the job during periods deemed necessary and appropriate by the public works administrator. The inspector may require the permittee to correct all deviations from the terms and conditions of the permit. Prior to final inspection, the permittee shall give notice to the County public works administrator, in writing or in any other manner allowed by County for the final inspection. In no event shall the permittee be authorized to do any backfilling, which would interfere with the final inspection. The pre-inspection notice to County shall be given as follows:

(a) If the utility or other regulated activity under the permit is completed within 5 working days, the pre-inspection notice may be given at the same time as the permittee gives the start work notice to County under Section 3 of these regulations, by specifying the date on which the work will be completed and ready for final inspection by County.

(b) If the utility or other regulated activity under the permit is completed in more than 5 working days, then the pre-inspection notice shall be given to County not sooner than 24 hours before the construction is actually completed and ready for inspections.

If the permittee fails to provide the pre-inspection notice as required in this section, County may require test holes to be excavated at permittee's expense. The number and location of the test holes shall be determined by County as needed to verify placement and depth of buried facilities and other improvements.

14.2 Any supervision and/or control exercised by the County public works administrator shall in no way relieve applicant of any duty or responsibility to the general public, or relieve applicant from any liability for loss, damage, or injury to persons or property as required in these regulations.

Section 15

Maintenance

Applicant shall at all time keep facilities authorized by the permit in a good state of repair in order to maintain the safety of the public. [ORS 374.315]

Section 16

Removal, Relocation or Repair

16.1 County may require applicant to remove, relocate, or repair any utility facility or other improvements lying within public rights-of-way covered by the permit at the sole cost of applicant.

16.2 Upon receiving written notice from the County Board or public works administrator to remove, relocate, or repair any utility facility or other condition, applicant shall arrange to remove, relocate, or repair at applicant's sole cost, in accordance with the notice. The required removal, relocation, or repair shall be completed within 30 days.

16.3 Should applicant fail to remove, relocate, or repair the facility or condition as provided

above, County may remove, relocate, or repair same and submit a statement of all related costs to applicant. All such costs shall be immediately due and payable by applicant. [ORS 374.320]

16.4 If an applicant fails to complete the removal, relocation, or repair of facilities or conditions required pursuant to this section, County may undertake to effect the removal, relocation, or repair and charge the permittee or other responsible parties for the expenses incurred by the County. County may recover for such expenses from the bond, bond agreement or security deposit submitted by the applicant.

Section 17

Prohibition; Enforcement

Any utility activity or other regulated activity that is contrary to the terms of these regulations or any permit issued herein is prohibited. Any violation of current Oregon Revised Statutes or Administrative Rules or Yamhill County ordinances or regulations or these general provisions shall be a Class "A" violation. Failure to give the Public Works Department notice of start of construction is also a Class "A" violation. Permit violations may result in the revocation of the permit and/or the violator being cited into Yamhill County Circuit Court. Penalties may include fines up to \$720 for each and every day in violation of the permit, stop-work and/or removal orders, injunctive relief, and any other remedy allowed by law. No person, firm, corporation, or other entity shall engage in or procure, aid or abet any other person to engage in any conduct or activity for which a permit, certificate, label or other formal authorization is required by any specialty code, statute, ordinance, or county-issued permit or other regulation without first having obtained such permit, certificate, label or other formal authorization. Any such conduct shall be a Class "A" violation pursuant to ORS 153.025. Penalties may include fines up to \$720 for each and every day in violation of the permit, stop-work and/or removal orders, injunctive relief, and any other remedy allowed by law. [ORS 30.315, ORS 153.025, 203.065]

Section 18

Authority

The Yamhill County Public Works Department has authority to impose any conditions to a permit deemed necessary to meet the standards of the American Association of State Highway and Transportation Officials (AASHTO standards), or to make the road safe for travel, or to otherwise ensure compliance with these regulations. [ORS 368.011]