

FILED

MAY 15 1985

COUNTY COURT JOURNAL

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF TILLAMOOK COUNTY, OREGON

By JUNE WAGNER
COUNTY CLERK
DEPUTY

In the Matter of Adopting)
Regulations for Utilities)
in Tillamook County's)
Public Road Rights-of-Way)
_____)

ORDINANCE NO. 28

WHEREAS, state law permits public and private utilities to install facilities within public road rights-of-way, and

WHEREAS, Tillamook County has authority to impose reasonable rules and regulations respecting the installation of such facilities for the safety and convenience of its citizens, and

WHEREAS, a simplified no-charge permit procedure to permit such reasonable regulation is in the interest of the public;

NOW, THEREFORE, the Board of Commissioners of Tillamook County ordains as follows:

1. The nine-page document entitled "Regulations for Utilities in Tillamook County Public Road Rights-of-Way," which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby adopted.

2. Any violation of this Ordinance shall be subject to any and all legal remedies, civil and criminal, available to the County pursuant to state or local law.

3. To the extent of any conflict between this Ordinance and Order #1011 "In the Matter of the Franchise of

Tillamook People's Utility District," dated June 17, 1975, this Ordinance shall control.

4. Order entitled "In the Matter of Application to the County Court for the Placing of Public Utility Poles on County Roads and Dedicated Streets," dated December 16, 1953, is hereby repealed.

5. This ordinance being deemed necessary by the Board of Commissioners for the immediate preservation of the public peace, health, safety and general welfare of the citizens of Tillamook County, an emergency is declared to exist and this ordinance shall take effect immediately upon its adoption.

DATE OF FIRST READING: May 1, 1985

DATE OF SECOND READING AND ADOPTION: May 15, 1985


BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON


Gerald A. Woodward, Chairman

APPROVED AS TO FORM:


Dean J. Kinkade, Commissioner


Mark A. Wehrly, County Counsel


Gerald J. Creasy, Commissioner

REGULATIONS FOR UTILITIES
in
Tillamook County Public Road Rights-of-way

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2. PURPOSE AND POLICY

- 2.1 The purpose of these Regulations is to establish the rules and permit procedures for installing, maintaining, repairing, operating or using pole lines, buried cable, pipe lines or other miscellaneous operations and facilities on Tillamook County Public Road rights-of-way.

3. DEFINITIONS

- 3.1 "Applicant" is the company, corporation, agency, organization or individual which conducts or finances a utility activity covered by these Regulations.
- 3.2 "Board" is the Tillamook County Board of Commissioners.
- 3.3 "County" is Tillamook County.
- 3.4 "Public Road" is a road within Tillamook County over which the public has a right of use that is a matter of public record, but which is not a city street, or state or federal road.
- 3.5 "Utilities Administrator" is the Tillamook County Director of Public Works or his/her authorized representative.
- 3.6 "Utility Activity" is any installation, maintenance, repair, replacement, removal or use of any utility facility.
- 3.7 "Utility 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" also includes a non-utility facility which Tillamook County decides to allow within the public road right-of-way.

4. PERMIT REQUIRED; APPLICATION

- 4.1 A separate permit application is required to be submitted for every new installation or expansion of an existing installation of a utility facility. Service connections to/from a utility facility shall be considered as incidental appurtenances to the use for which the initial permit was granted and special permits shall not be required. However, the Utilities Administrator may require the issuance of service connection permits for an Applicant which has not had a satisfactory history of compliance with the terms of the County's utility permits. Such requirement shall be in writing from the Utilities Administrator.
- 4.2 The Applicant shall submit with the permit application prints of a satisfactory map and/or plan showing in detail the location of the proposed facility or operations as described in the permit application. Two (2) prints of the map and/or plan are required.
- 4.3 The permit application will be reviewed by the Utilities Administrator. The Utilities Administrator 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, by the Utilities Administrator of the revised application (if required), the bond (if required) and the certificate of insurance (if required), the permit will be issued to the Applicant.

5. LIABILITY

- 5.1 The 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 right-of-way of the said road, when such injury, death, loss or damage arises out of any utility activity covered or authorized by the permit. The Applicant shall not be responsible for negligent acts performed by the County.
- 5.2 After reasonable prior notification to affected permit holders of impending construction or maintenance activities, the County, its officers, agents or employees, except for negligent acts, shall not be held responsible or liable for injury to the Applicant, its officers, employees and agents, or damage to Applicant's property that may arise out of any such activities that may be carried on by or under the direction of either the County or any duly authorized representative of the County.

6. INSURANCE

- 6.1 The Applicant or his or her contractor shall obtain and carry, for the period of time required for the complete installation of the facilities authorized by the permit, including the repair and restoration of the road facilities, and also during such future periods of time when operations are performed involving the repair, relocation or removal of said facilities authorized by the permit, a liability and property damage insurance policy providing coverage for all of the liabilities specified in Section 5.1 of these Regulations. The policy shall include, as additional named insured, Tillamook County, its officers, agents and employees for personal injury to any officers, agents, and employees of the County, or damage to any of its or their property. The policy's minimum dollar amounts of liability coverage shall be as specified in ORS 30.270. The policy shall be in an insurance company duly authorized and licensed to do business in the State of Oregon. A copy of all policies or a certificate evidencing same, shall be submitted to the Utilities Administrator.
- 6.2 The Applicant shall be exempt from providing evidence of insurance with each permit application if the 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.

7. BOND

- 7.1 The Applicant may be required to furnish a bond for the period of time required for the complete installation of the facilities authorized by the permit, including the repair and restoration of the road facilities. The bond shall be in the amount specified in the Special Provisions of the permit.
- 7.2 A cashiers check may be submitted to the County in lieu of a bond. 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 Utilities Administrator.
- 7.3 The Applicant will not be required to furnish a bond if both of the following conditions are met:
- A. The County has no past history of difficulties in obtaining compliance from the Applicant for activities associated with previous permits.
 - B. The County has on file at least five (5) permits which have had the installation, including repair and restoration of the road facilities, completed.

8. EFFECTIVE PERIOD OF PERMIT

- 8.1 Unless otherwise provided in the Special Provisions, the permit shall be in effect for an indefinite period of time from and after the date issued, unless sooner revoked by mutual consent, or by the County Commissioners for failure of the Applicant to abide by the terms and conditions of the permit, or by operation of the law, or at the time the utility facility for which the permit is issued is removed from operation.
- 8.2 Failure of the Applicant to abide by any of the terms and conditions of the permit, these regulations or any applicable law shall be sufficient cause for cancellation of the permit. Cancellation may be caused without prior notice and shall be effective upon mailing of a notice of cancellation by certified mail to the Applicant at the address stated on the application and permit.
- 8.3 The permit and the privileges granted thereunder shall not be sold, assigned or in any manner transferred to any third party without the written assent of the Utilities Administrator being first obtained. In the event that such a sale, assignment or transfer is made without said written assent, the permit shall be deemed null and void and all privileges thereunder shall be deemed forfeited.

8.4 The applicant may have joint use agreements with other utility companies providing for use of the same utility facility by more than one utility company. Whenever a joint use agreement is in effect, a permit is required for each utility company.

8.5 If the Applicant fails to commence installation of the utility facility covered by the permit within twelve (12) months from the date the permit is issued, said permit shall be deemed null and void and all privileges thereunder forfeited, unless a written extension of time is obtained from the Utilities Administrator.

9. OTHER AGENCIES AND UTILITIES

9.1 Nothing in this permit 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 form of approval which may be required by other State Agencies; Federal Agencies; Cities and/or Counties of Oregon. It is also the responsibility of the Applicant to determine the location of other utilities within the road right-of-way. The County shall inform the Applicant of any other uses by other utilities which are known by the County to be within the road right-of-way which may conflict with the use of the Applicant as proposed in the application.

10. ALLOCATION OF COSTS

10.1 The entire cost of any utility conducted activity in any way incident to the utility facilities or operations authorized by the permit, shall be paid by the Applicant.

10.2 The Applicant shall only be responsible for the expenses of the County which are specified within these regulations.

10.3 The County may require the Applicant to remove, relocate or repair the utility facility covered by the permit at the sole cost of the Applicant. Nothing in this section shall be construed to require removal from, or relocation within easements or other compensable interests owned by the utility.

11. CONSTRUCTION DETAILS

11.1 No new installation or expansion of an existing installation shall be started until the Applicant has received a permit from the County.

11.2 The Tillamook County Public Works Department shall be notified at least 24 hours prior to any construction, maintenance or repair activities which will involve trenching across or into a roadway.

- 11.3 The Applicant's completed facility shall be in conformance with the plans referred to in the approved permit. The County shall be informed of any changes in the construction from the approved plans. The County may require any construction which substantially deviates from the plans to be changed if approval for the change was not obtained prior to the construction.
- 11.4 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 and county agencies.
- 11.5 The County may require the condition, "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 to be installed." If this condition is to be applied, it shall be added as a Special Provision to the permit.
- 11.6 All trenches with installed facilities shall be backfilled by the end of the normal working day.
- 11.7 No more than 300 feet of trench may be open parallel to a roadway at night.
- 11.8 The diameter of the bored holes under roadways shall not be more than 1/2 inch larger than the outside diameter of the pipe or conduit fittings to be placed therein.
- 11.9 Trenching or tunneling shall be no nearer either edge of the surfaced portion of the road than specified in the Special Provisions.
- 11.10 All debris, refuse and waste of all kinds which may have accumulated upon the road right-of-way by reason of the operations of the Applicant shall be removed immediately upon completion of the operations. The road right-of-way must be restored to as close as reasonably possible to its prior condition.
- 11.11 The County may take corrective actions to restore the roadway and/or road right-of-way if the work is not being done in compliance with these construction details. The County will charge the Applicant for all related costs. Prior to taking corrective actions, the County will provide reasonable notice to the Applicant and give the Applicant an opportunity to correct the problem. In case of a hazardous condition, the County may take corrective actions without prior notice to the Applicant.

12. ROADWAY CUTS

- 12.1 Open cutting of the paved or surfaced portion of the road will not be permitted unless special permission is granted in the Special Provisions.
- 12.2 Trench edges in paved areas shall be sawed or cut to neat lines by methods satisfactory to the Utilities Administrator before starting to break the pavement slab.
- 12.3 The County reserves the right to specify, in the special provisions, the materials to be used for backfill under the roadway. The backfill under all roadways shall be thoroughly compacted.
- 12.4 The paved surface shall be patched with asphaltic concrete mix with a compacted depth as specified in the Special Provisions.
- 12.5 Pavement patching shall be completed within a reasonable time after the trench has been backfilled. 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 asphalt hot plant. The Applicant shall maintain the trenched area until permanent pavement patching is completed. The County may require at least a "cold patch" temporary pavement patch on all designated arterials and collectors.
- 12.6 For a period of one year following the permanent patching of the paved surface, the Applicant shall be responsible for the condition of pavement patches, and during that time shall repair any patches which become settled, cracked, broken or are otherwise faulty.
- 12.7 The County may repair any unmaintained or defective roadway patch or trench without prior notice to the Applicant and charge the Applicant for all related costs. The County will attempt to notify the Applicant prior to the County performing the work.

13. TRAFFIC CONTROL

- 13.1 During the course of any utility activity authorized by the permit, or during any subsequent repair, removal or relocation thereof, the Applicant shall at all times maintain such flaggers, signs, lights, flares, barricades and other safety devices as specified in the Manual on Uniform Traffic Control Devices (MUTCD). Where the MUTCD indicates engineering judgment required to establish the specific requirements for traffic control, the Utilities Administrator decision shall be final. The Applicant shall maintain all signs, lights, flares, barricades and other safety

devices during non-work hours, and the Utilities Administrator shall be furnished the telephone number of the person who is responsible for their maintenance.

- 13.2 The Applicant shall so conduct his or her operations that there will be a minimum of interference with or interruption of traffic upon and along the road.
- 13.3 Closure of roadways, intersecting streets, road approaches or other access points for over ten (10) minutes will not be permitted unless a plan for the satisfactory handling or rerouting of traffic has been previously approved by the Utilities Administrator.
- 13.4 The County may require, in the special provisions, the Applicant to utilize steel running plates, planks or other satisfactory methods to maintain proper traffic flow.
- 13.5 If an emergency threat to the traveling public exists due to a utility activity, the County may, without prior notice, take corrective actions to protect the public. The County will charge the Applicant for all related costs. Within a reasonable time after such corrective actions, the County will notify the utility of the County actions taken.

14. EMERGENCY MAINTENANCE AND REPAIRS

- 14.1 In case of an emergency, the provisions of this section supersede the provisions of the other sections of these regulations. An emergency is defined as a condition which either causes a loss of utility service to a customer, or which causes an unsafe or unhealthy condition to the public.
- 14.2 In case of an emergency, the Applicant may start work on the facility, or modify previously permitted facilities, without receiving an approved permit. The Applicant shall notify the County as soon as possible of the Applicant's work in process. After the emergency work is completed the Applicant shall submit a permit application for any new or expanded installation. The County reserves the right to require changes to any utility facilities installed during an emergency, at no cost to the County.
- 14.3 In case of an emergency, the Applicant may trench across or into a roadway without prior notification to the County. The Applicant shall notify the County as soon as possible of the Applicant's work in process.
- 14.4 In case of an emergency, the Applicant shall notify the Tillamook County Sheriff's Dispatch of the need for the closure of any roadway. Unless permission to close the road is denied by the County, the Applicant may then close the roadway.

15. INSPECTION

- 15.1 To insure compliance with the terms and conditions of the permit, the County may place an inspector on the job during such periods as the Utilities Administrator deems necessary, to inspect and check compliance with the terms of this permit. The inspector may require the Applicant to correct all deviations from those terms and conditions.
- 15.2 Any supervision and/or control exercised by the Utilities Administrator shall in no way relieve the Applicant of any duty or responsibility to the general public, nor relieve the Applicant from any liability for loss, damage or injury to persons or property as provided in Section 5.1 of these Regulations.

16. MAINTENANCE

- 16.1 Applicant shall at all times keep facilities authorized by the permit in a good state of repair in order to maintain the safety of the public.

17. REMOVAL, RELOCATION OR REPAIR

- 17.1 The County may require the Applicant to remove, relocate or repair any utility facility covered by the permit at the sole cost of the Applicant. Nothing in this section shall be construed to require removal from, or relocation within easements or other compensable interests owned by the utility.
- 17.2 Upon receiving written notice from the Board or Utilities Administrator to remove, relocate or repair any utility facility, the Applicant shall make arrangements for such removal, relocation or repair at the Applicant's sole cost, in accordance with the notice. The required removal, relocation or repair shall be completed within a reasonable time.
- 17.3 Should the Applicant fail to remove, relocate or repair the facility as provided above, the County may remove, relocate or repair same and submit a statement of all related costs to the Applicant. All such costs shall be immediately due and payable by the Applicant.

18. PROHIBITION

- 18.1 Any utility activity which is contrary to the terms of these regulations or any permit issued herein, is prohibited.