
CHAPTER 1034
Use of Road Rights of Way

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CROSS REFERENCES

County roads - see ORS 366.320; S.U. & P.S. Ch. 1024

Construction and maintenance of local access roads - see ORS 368.031, 368.036; S.U. & P.S. 1024.22

Improvement of streets and roads in unincorporated areas - see ORS 371.605 et seq.

Public Works Department - see ADM. Ch. 232

Public Works operations - see S.U. & P.S. Ch. 1020

Ditches see S.U. & P.S. Ch. 1028

1034.01 AUTHORITY.

This chapter is adopted under the authority granted by ORS 374.310 and the County Charter.

(Ord. 85-26. Passed 10-30-85.)

1034.02 DEFINITIONS.

As used in this chapter:

- (a) County Road - means a public road under the jurisdiction of the County that has been designated as a County road.

- (b) Driveway/Road Approach Permit - means a permit allowing construction or alteration of a facility which provides ingress to or egress from a County road (i.e. a driveway, an intersecting road or street, a footpath, a bike path, widened vehicular access, etc.). The permit regulations apply to that portion of the facility which is or will be upon a County road right of way.
- (c) Major Improvement - means an improvement or alteration for which detailed plans and adherence thereto are deemed necessary by the Roads and Parks Director.
- (d) Minor Improvement - means an improvement or alteration for which detailed plans are not deemed necessary by the Roads and Parks Director.
- (e) Public Road - means a road over which the public has a right of use that is a matter of public record.
- (f) Roads and Parks Director - means the person designated by the County Administrator as being responsible for administration of the road activities of the County.
- (g) Right of Way - means land, property, or an interest therein, usually in a strip, acquired for or devoted to road purposes.
- (h) Road - means the entire right of way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:
- (1) Ways described as streets, highways, throughways or alleys;
 - (2) Road related structures that are in a right of way, such as tunnels, culverts or similar structures; and
 - (3) Structures that provide for continuity of the right of way, such as bridges.
- (i) Road Encroachment Permit - means a permit allowing private facilities of a diverse nature, such as fences, structures, signs and landscaping, to be placed within a County road right of way. The permit shall state whether the permitted use is temporary or permanent.
- (j) Road Improvement Permit - means a permit allowing alterations or improvements, such as grading, surfacing or oiling, of a County road by a person not associated with the County Roads and Parks Department.
- (k) Roadway - means the portion of a road, including shoulders, for vehicular use.

(l) Special Permit - means a permit allowing temporary use of a County road right of way for business operations or public events, such as log loading, an aircraft taxiway, scheduled public walks, runs and biking events.

(m) Utility Permit - means a permit allowing the placement and routine maintenance of public facilities, such as water and sewer lines, gas lines and transmission lines, within a County road right of way.

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.03 WORK IN RIGHTS OF WAY; PERMIT REQUIRED; CONDITIONS; EQUITABLE REMEDIES.

(a) Except as otherwise provided in this chapter, no person shall place, build, construct, extend, enlarge or otherwise work on any facility, thing or appurtenance in the right of way of a County road without first obtaining a permit therefor from the County Roads and Parks Director. This requirement applies to all work, including, but not limited to, the following:

- (1) Constructing, grading, surfacing or providing drainage facilities under the access to a private driveway or approach road;
- (2) Pipelines, irrigation lines, sewer lines, underground cables, overhead wires and utility poles;
- (3) Signs, billboards, symbols, notices, advertisements or directional guides;
- (4) Sidewalks, curbs, gutters, retaining walls, meters, inlet basins, fences and ornamental objects;
- (5) Planting of trees or other vegetation; and
- (6) Mailboxes and supports other than those conforming to design standards provided by the Roads and Parks Department.

(b) No person shall construct or maintain any facility, thing or appurtenance within any such right of way in violation of any of the conditions of a permit or any of the provisions of this chapter.

(c) No person shall use, occupy or maintain anything or facility placed wholly or partly within the road right of way in violation of, or without first obtaining the permits required by, any law in effect at the time such thing or facility is so placed.

(d) Nothing in this section shall be construed to prevent the County from removing anything from a County road right of way, whether or not the same is installed under a permit or in compliance with this chapter, where the Board of County Commissioners finds that such removal has become necessary to the public's use or improvement of the road.

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.04 EXCEPTIONS TO CERTAIN REQUIREMENTS; INTERPRETATION.

(a) A permit is not required for the following, providing the work does not involve excavation:

- (1) Performing maintenance or minor improvement to existing facilities lawfully in place;
- (2) Utilizing lawfully installed facilities as intended when installed, including the following:
 - A. Inspection and cleaning of sewer and storm water facilities;
 - B. Inserting cables in existing conduits or making service connections within a terminal structure; and
 - C. Utilization that is expressly acknowledged by prior permit provisions; and
- (3) Other miscellaneous minor activities as specifically approved in writing by the Roads and Parks Director.

(b) Nothing in this chapter shall:

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

- (3) Be deemed to affect any approach road, structure, pipeline, ditch, cable, wire or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any County road prior to September 13, 1967, subject, however, to the authority reserved to the Board of County Commissioners in Section 1034.03(d).

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.05 CHANGE IN USE OF APPROACH ROAD; PERMIT REQUIRED.

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

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

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.06 REVIEW OF PERMIT APPLICATIONS.

From the date this chapter becomes effective (Ordinance 85-26, passed October 30, 1985), the authority contained in ORS 374.305 through 374.325 relating to County road applies to any facility, thing or appurtenance within a County road right of way. After a completed application with the required fee has been submitted, the Roads and Parks Director, or his or her designate, shall review the application and shall issue the permit if he or she determines that the proposal will comply with the provisions of this chapter and the applicable requirements imposed by State law. The Director may impose additional written conditions on a permit consistent with the provisions of this chapter if he or she finds such conditions to be necessary to the public interest in the safe use of the road and the preservation of the public improvements therein and on the property adjoining the same. The Director may also require the applicant to submit plans which, when approved, will become part of the conditions of the permit. The Director shall prepare appropriate forms to assist the applicant in providing the information necessary for the application review. If the applicant disagrees with the Director's interpretation of the regulations or with the conditions imposed by the Director, or if the Director finds that the proposal raises problems of public safety or problems having to do with the public use or protection of the road, which problems are not addressed in the regulations, then either may refer the application to the Board of County Commissioners, which Board shall, within thirty days, afford them an opportunity to be publicly heard and make its final decision in the matter. If the Board finds that the proposal creates a problem to public interests in the road which cannot be solved by the application of the regulations or of adequate conditions, the Board shall deny the application. The Director shall arrange for whatever field study and inspection he or she deems to be appropriate to assure compliance with the requirements.

(Ord. 85-26. Passed 10-30-85; Ord. 92-7. Passed 7-1-92; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.07 PERMIT REGULATIONS AND CLASSIFICATION.

(a) The regulations pertaining to each of the various permits issued by the Roads and Parks Director, which are set forth in Exhibit A, following the text of this chapter, are hereby adopted and made a part of this chapter.

(b) A permit fee shall be paid at the time the application for a permit is submitted to the Director. All permits issued by the Director shall be classified under one of the following headings on a general "Facility Permit" form:

- (1) Driveway/road approach permit;
- (2) Road encroachment permit;
- (3) Road improvement permit;

(4) Special permit; and

(5) Utility permit.

(c) Copies of the regulations appropriate to the classification, as determined by the Director, shall be attached to, or referenced on, each permit issued.

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.08 PERMIT FEES.

Fees for the various permits required by this chapter are as follows:

- | | |
|-----------------------------------|----------|
| (a) Driveway/road approach permit | \$ 30.00 |
| (b) Road encroachment permit | \$ 45.00 |
| (c) Road improvement permit: | |
| Major improvement | \$250.00 |
| Minor improvement | \$ 30.00 |
| (d) Special permit | \$ 30.00 |
| (e) Utility permit | No fee |

(Ord. 85-26. Passed 10-30-85.)

1034.09 EXEMPTIONS FROM FEE REQUIREMENT.

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

- (a) Where installation of public facilities by public or quasi-public entities is involved;
- (b) Where the Roads and Parks Director finds that the organization which proposes the installation is engaged in a nonprofit activity and that the activity is for the benefit of the general public.
- (c) Where the permitted facility, thing or appurtenance in the right of way of the County road is in lawful existence as of the effective date of this chapter (Ordinance 85-26, passed October 30, 1985), except that this exemption does not apply to work done after such effective date; and

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

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.10 VIOLATIONS; REMOVAL OR CORRECTION OF INSTALLATIONS; PROSECUTION.

(a) If any person fails to obtain a permit or to comply with the appropriate regulations or permit conditions, then the Roads and Parks Director may take appropriate action to remove or correct the installation and recover the cost from the person responsible, all in accordance with the authority contained in ORS 374.307 and 374.320 as such statutes relate to County roads. However, such action shall not waive the County's right to prosecute the offender under Section 1034.99.

(b) In addition to the remedies set forth in subsection (a) hereof or prescribed by ORS 374.307 or 374.320, any person who violates or fails to comply with any of the provisions of this chapter shall be punished as provided in Section 1034.99. A separate violation may be deemed committed each day during or on which such unlawful condition is maintained or continued after citation or notice of violation has been given. Offenses under this section may be charged under Chapter 203 of the Administration Code.

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; E.Ord 2003-29. Passed 10-15-03; P. Ord 2003-28. Passed 10-29-03; Ord. 2007-2. Passed 1-31-07.)

1034.11 ALTERATION OR REMOVAL OF TREES AND VEGETATION IN COUNTY ROAD RIGHTS OF WAY.

(a) All trees within a County road right of way are subject to the County's control, and no tree may be altered or removed without a permit from the County. The permit requirement does not apply to public utilities exercising their rights within the right of way pursuant to State law or franchise. The authority to issue a permit under this section is delegated to the Roads and Parks Director or his or her designate. In issuing a permit, the County shall have the authority to impose such conditions as it deems necessary to the public safety and convenience.

(b) The County has and claims the right to remove or alter any tree, or remove any other vegetation, situated entirely within the County road right of way if, in the judgment of the Roads and Parks Director, such removal is necessary to the use or improvement of the road or related facilities or for the public safety.

(c) If the Roads and Parks Director finds that a tree to be removed may have marketable or ornamental value to the owner of the land abutting the half of the right of way on which the tree is situated, the County shall first send notice to the abutting owner, giving the owner thirty days within which to secure a permit and alter or remove the tree or vegetation. If within that period of time the tree or other vegetation is not removed or altered to the extent necessary to the public safety and convenience as found by the Roads and Parks Director, the County may remove or alter the tree or vegetation and, if it is a merchantable tree, retain it to defray the cost of removal. For purposes of giving notice under this subsection, the owner according to the Assessor's records of the property abutting the half of the right of way within which the tree is situated shall be deemed the owner of the underlying tree. Notwithstanding the foregoing, if the Roads and Parks Director or his or her designate determines that an emergency exists which may affect the public safety, no notice shall be required prior to the removal of the tree or vegetation.

(d) The Roads and Parks Director may define by written policy those criteria by which he or she determines that the removal or alteration of a tree or other vegetation within a County road right of way is necessary to the public safety or convenience; that a tree is marketable or has ornamental value to abutting property; or that an emergency exists which may affect the public safety. When such written policy is approved by the Board of Commissioners, any determination made by the Roads and Parks Director pursuant to the policy is final.

(e) Notwithstanding subsection (d) hereof, the Board of Commissioners may, on its own motion, within the said thirty days, review a proposal to remove a tree under this chapter and may determine, at its discretion, whether there is a public interest which outweighs the public safety issue raised by the presence or condition of the tree, or may determine at its discretion that the public safety and convenience can be adequately served without the removal of the subject tree considering its value or function.

(Ord. 88-15. Passed 9-7-88; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1034.99 PENALTY.

EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.

EXHIBIT A
PERMIT REGULATIONS

Permit No. _____
 Road _____
 Mile _____
 Twp. _____ R. _____ Sec. _____
 Lot(s) _____

Driveway/Road Approach Permit Regulations

What type of vehicle will regularly use this driveway?

Car/Pick-ups _____	Driveway top width minimum is sixteen feet
Light Trucks _____	Driveway top width minimum is twenty feet
Truck/Trailer Combinations _____	Driveway top width minimum is thirty feet

Note: Culvert length shall generally be ten feet longer than the required driveway width. Headwalls may be permitted to reduce required culvert length.

This driveway/road approach requires:

Culvert _____
 Diameter _____
 Length _____ (to be determined by road supervisor)
 Curb cut _____
 Entrance inlet _____
 Intermediate inlet _____
 Bridge _____
 Improvements to County road _____
 Engineering plans _____

Compliance with the appropriate standard drawing(s) attached hereto is required.

Materials

Culverts shall be sixteen-gauge corrugated metal (steel, not aluminum) pipe or Class Three concrete pipe for diameters through twenty-four inches. Consult the County Engineer for diameters larger than twenty-four inches. Backfill material may be granite or crushed rock with a six-inch minimum cover over the pipe.

Construction

- (1) Notify the County Roads and Parks Department twenty-four hours before beginning work by writing, by phone, or in person.
- (2) Culverts should be installed on straight lines, both vertical and horizontal. Bell or groove ends of concrete pipe shall be placed facing upstream.
- (3) The culvert flowline should match the flowline of the ditch. The minimum fall should be one inch in twenty feet.
- (4) The driveway/road approach should intersect the County road as near to a right angle as possible.
- (5) The maximum grade of the driveway/road approach on the County right of way should be ten percent and constructed so that the low point in the grade is over the culvert or so that the slope is away from the road, to prevent storm water and surfacing materials from encroaching on the road shoulder.

General Provisions

- (1) The applicant declares that he or she is the owner or lessee of the real property abutting the above described highway and has the lawful authority to apply for this permit.
- (2) The County assumes no liability for any damage which may be caused to the approach due to routine road maintenance or road improvement. It shall be the responsibility of the holder of this permit to construct the approach to such lines and grades so as not to interfere with normal road maintenance operations.
- (3) A driveway/road approach permit may be denied when, in the opinion of the Roads and Parks Director, lack of adequate sight distance would create a traffic safety hazard. The applicant may be required to remove brush, widen cut banks, relocate the proposed approach or otherwise satisfy sight distance requirements and to ensure that those distances are maintained. The minimum recommended sight distances for the estimated speed of the traffic are given below. The sight distance should be measured from the height of the driver's eye or approximately forty-five inches.

<u>Speed (mph)</u>	<u>Minimum Sight Distance (ft.)</u>
25	150
30	200
35	225
40	275
45	325
50	400
55	450

(4) Failure to construct the approach or approaches in conformance with the provisions written herein or with plans attached hereto may result in cancellation of the permit and removal of the partially constructed approach or approaches at the applicant's sole expense.

(5) Proper barricades and warning signs must be maintained at all times during construction by the holder of this permit so as to ensure the safety of the motoring public.

(6) The County road is to be restored to its original or to a better condition. All excess rock or dirt is to be removed from the traveled portion of the road by brooming or washing, as directed. Final clean-up is to be completed within one week after the approach is constructed.

Permit No. _____
Road _____
Mile _____
Twp. _____ R. _____ Sec. _____
Lot(s) _____

Encroachment Permit Regulations

Pertinent encroachment permit conditions will be issued with the permit. They are:

(Example Conditions)

- (1) This permit is valid only for the three signs that are described on the facility permit.
- (2) The permit holder shall hold the County harmless and blameless from damages that may be caused or contributed by the installation of the signs.
- (3) The signs shall be installed such that all posts and sign projections are located behind the roadside ditch (away from the road) or outside shoulder areas in fill sections.
- (4) The signs shall be installed in locations that do not restrict sight distance on the road.
- (5) In the event that County maintenance and/or construction activities require utilization of the public right of way or that the sign installations become safety hazards, in the opinion of the Roads and Parks Director, this permit may be rescinded and the signs removed at the permit holder's expense. The County will make a reasonable effort to provide the permit holder with prior notification of any such activity, but assumes no responsibility.

Permit No. _____

Road Improvement Regulations

This permit is for a major/minor road improvement. The special conditions applicable to this permit are:

- (1) Proper barricades and warning signs must be maintained at all times during construction by the holder of this permit so as to ensure the safety of the public.
- (2) All work and materials shall conform to the Jackson County Roads and Parks Department's "Standards and Specifications for County Roads" (Chapter 1024 of the Codified Ordinances of the County).
- (3) Each phase of construction (culverts, subgrade, base rock, etc.) shall be inspected and approved by the Roads and Parks Department before proceeding with the next phase.
- (4) Detailed plans prepared by an Oregon registered professional engineer will be required for major improvements.

Permit No. _____

Special Permit Regulations

Pertinent special permit conditions will be issued with the permit. They are:

(Example Conditions)

- (1) This permit is granted to haul a maximum of six loads of logs per day on the Howard Prairie Dam Access Road.
- (2) Logs may be hauled only when the road base is frozen.
- (3) All hauling operations must be suspended during winter thaw periods, during the spring thaw or at any other time the District Maintenance Supervisor deems it necessary.

Permit No. _____

Utility Permit Regulations General Conditions

- (1) This permit is granted for use only on roads under the jurisdiction of the Board of County Commissioners and is not valid upon any Federal highway, State highway, city or Town Street or any road not on the County road system.
- (2) The Roads and Parks Department is to be notified a minimum of twenty-four hours prior to starting work within a County road right of way (776-7268 or 826-3122).
- (3) As provided in ORS 758.010, the Roads and Parks Department, acting on behalf of the Board of County Commissioners, may designate where utilities may be located within a County road right of way and may order the location of a facility changed if deemed expedient.
- (4) The permittee shall be responsible for all damage caused by any operation associated with the utility installation. All damaged areas shall be restored to a condition that is as good as or better than that which existed prior to the utility installation.
- (5) By acceptance of this permit, the permittee agrees to be responsible for all permit conditions, including the attached special conditions, and such responsibility shall survive the suspension or termination of this permit.
- (6) Utility permit applications must be accompanied by two sets of plans or a sketch that accurately depicts and locates the work to be done so that someone unfamiliar with the work can determine the location of the installation. Such plans must be adhered to unless written permission to vary therefrom is granted by the County Engineer.

Special Conditions

Compliance with the applicable "Special Conditions for Underground Utilities within County Road Rights of Way," "Special Conditions for Underground Electric Power Line Installation within County Road Rights of Way" and/or "Minimum Signing Requirements for Construction and Maintenance areas" is required.

(Ord. 85-26. Passed 10-30-85; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

THIS PAGE RESERVED FOR EXPANSION