

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Adopting Rules and)
Regulations for the Placement or)
Construction of Ditches, Structures,)
Facilities and Utilities on the)
Rights of Way of Public and County)
Roads in Columbia County, Oregon)

ORDINANCE NO. 91-6

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 91-6.

SECTION 2. PURPOSE.

The purpose of this ordinance is to adopt rules and regulations for the placement or construction of ditches, structures, facilities and utilities on the rights of way of public and County roads in Columbia County, Oregon.

SECTION 3. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035, 374.305 to 374.330 and 758.010 to 758.035.

SECTION 4. DEFINITIONS.

As used in this ordinance, the following definitions apply:

- A. "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, special districts, municipalities and cooperatives.
- B. "Utility" includes any pipeline, cable or wire including water, gas, electric or communication service lines and related fixtures and facilities.

SECTION 5. CONSTRUCTION PERMITS REQUIRED.

No person shall place, build or construct any ditch, structure, facility or utility on the right of way of any County road in Columbia County, Oregon or of any public road under County jurisdiction, or substantially alter any such ditch, structure, facility or utility, without first obtaining a construction permit from the Columbia County Road Department. Nothing in this ordinance is intended to require a permit for ordinary maintenance or repair of ditches, structures, facilities and utilities located on the right of way of any County road in Columbia County or of any public road under County jurisdiction.

SECTION 6. CONSTRUCTION PERMIT FORMS.

The form of construction permit shall be as provided by order of the Board of County Commissioners for Columbia County, Oregon.

SECTION 7. CONSTRUCTION PERMIT FEES.

- A. To the extent allowed by ORS 758.010, fees for the issuance of construction permits may be adopted by order of the Board of County Commissioners.
- B. Nothing in this ordinance is intended to prohibit the County from adopting franchise fees for the use of County and public rights of way if otherwise allowed by state law.

SECTION 8. LOCATION OF DITCHES, STRUCTURES, FACILITIES AND UTILITIES.

The Board of County Commissioners have authority to designate the location on the rights of way of County roads and of public roads under County jurisdiction where ditches, structures, facilities and utilities may be located, and may order the location of any such ditch, structure, facility or utility to be changed when the Board deems it expedient. Any ditch, structure, facility or utility placed or constructed in a different location on such right of way than that designated in any order of the Board or construction permit issued by the Roadmaster is a public nuisance and may be abated accordingly.

SECTION 9. RULES AND REGULATIONS.

The Board of County Commissioners may, by order, adopt reasonable rules and regulations to govern the placement or construction of ditches, structures, facilities or utilities on the rights of way of County roads and of public roads under County jurisdiction. Such rules and regulations shall include such provisions, terms and conditions as in the judgment of the Board are in the best interest of the public for the protection of the road and the traveling public and may impose reasonable requirements for the location, operation and maintenance of such ditches, structures, facilities and utilities.

SECTION 10. SPECIFICATIONS AND CONDITIONS.

The Columbia County Roadmaster may include in or attach reasonable specifications and conditions to construction permits issued for the placement or construction of ditches, structures, facilities and utilities on the rights of way of County roads or of public roads under County jurisdiction. Such specifications and conditions shall include such provisions and terms as in the judgment of the Roadmaster are in the best interest of the public for the protection of the road and the traveling public and may impose reasonable requirements for the location, operation and maintenance of such ditches, structures, facilities and utilities.

SECTION 11. INSURANCE AND BONDING.

- A. The Board may require an applicant for a construction permit to furnish public liability and property damage insurance in such amounts as determined by the Board, not to exceed \$1 million for all claims out of each accident or occurrence. Such insurance shall indemnify Columbia County, its Board of County Commissioners, the Roadmaster and all other County officers, agents and employees from any claim which might arise on account of the issuance of said construction permit and the use of the ditch, structure, facility or utility placed or constructed pursuant to such permit. In lieu of a separate insurance policy, an applicant may supply the Roadmaster with a certificate of insurance in the amounts designated above naming the County, its Board, the Roadmaster and other County officers, agents and employees as additional insureds.
- B. In addition, the Board may require the applicant to furnish indemnity insurance or an indemnity bond in a sum fixed by the Board indemnifying the County for any damage caused to the road or roads that may be caused by the issuance of said construction permit or the placement, construction or use of said ditch, structure, facility or utility, or indemnifying the Board and the Road Department against any costs or damages that may be incurred by reason of the failure of said applicant to comply with the terms of any such construction permit.

SECTION 12. EXPENSES BORNE BY APPLICANT.

All work or construction under any construction permit issued by the Roadmaster shall be at the expense of the applicant and under the general supervision of the Roadmaster or his designee. After completion of the placement or construction of the ditch, structure, facility or utility, it shall be maintained at the expense of the applicant and in accordance with any rules and regulations adopted by the Board and the conditions of the construction permit.

SECTION 13. REMOVAL OR REPAIR OF DITCHES, STRUCTURES, FACILITIES AND UTILITIES CONSTRUCTED WITHOUT PERMISSION.

- A. If any person places, builds or constructs any ditch, structure, facility or utility on the right of way of any County road or of any public road under County jurisdiction without first obtaining a construction permit from the Road Department, the Columbia County Roadmaster may, after the expiration of 30 days following the transmittal of a written notice to such person, at the expense of such person, remove the ditch, structure, facility or utility from the right of way or reconstruct, repair or maintain the ditch, structure, facility or utility in accordance with or as required by the rules and regulations adopted pursuant to this ordinance. This expense may be recovered from such person by the County in any court of competent jurisdiction.

- B. Notwithstanding subsection A of this section, if the Roadmaster or his designee determines that a traffic or pedestrian hazard is created by the ditch, structure, facility or utility which causes imminent danger of personal injury, he may:
- (1) Order the ditch, structure, facility or utility removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the person who placed or constructed the ditch, structure, facility or utility, and to the owner of the property on which the ditch, structure, facility or utility was placed or constructed.
 - (2) If the ditch, structure, facility or utility is not removed, repaired or maintained to eliminate the hazard within the time set under paragraph (1) of this subsection, eliminate the hazard and recover the expenses of any removal, repair or maintenance of the ditch, structure, facility or utility from any such person in any court of competent jurisdiction.

SECTION 14. REMOVAL OR REPAIR OF DITCHES, STRUCTURES, FACILITIES AND UTILITIES FOR NONCOMPLIANCE.

- A. If any person fails to place, build, construct, maintain or remove a ditch, structure, facility or utility in accordance with rules and regulations adopted pursuant to this ordinance and the conditions of any construction permit issued pursuant to this ordinance, the Columbia County Roadmaster may, after the expiration of 30 days following the transmittal of a written notice to such person, at the expense of such person, remove the ditch, structure, facility or utility from the right of way or reconstruct, repair or maintain the ditch, structure, facility or utility in accordance with or as required by such rules and regulations and the conditions of the permit. This expense may be recovered from such person by the County in any court of competent jurisdiction.
- B. Notwithstanding subsection A of this section, if the Roadmaster or his designee determines that a traffic or pedestrian hazard is created by the ditch, structure, facility or utility which causes imminent danger of personal injury, he may:
- 1) Order the ditch, structure, facility or utility removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the person who placed or constructed the ditch, structure, facility or utility, and to the owner of the property on which the non-compliance occurred.
 - 2) If the ditch, structure, facility or utility is not removed, repaired or maintained to eliminate the hazard within the time set under paragraph 1) of this subsection, eliminate the hazard and recover the expenses of any removal, repair or maintenance of the ditch, structure, facility or utility from any such person in any court of competent jurisdiction.

SECTION 15. ENFORCEMENT.

- A. In addition to any other remedies which may be permitted by law, this ordinance may be enforced by, and violators hereof are subject to the penalties provided in, the Columbia County Enforcement Ordinance.
- B. Upon issuance of a letter of authority signed by the Board of County Commissioners pursuant to Section 11 of the Columbia County Enforcement Ordinance, the Columbia County Roadmaster shall be authorized to, have jurisdiction of and may enforce violations of this ordinance. His authority and jurisdiction is subject to the primary authority of the Board of County Commissioners. He may issue a citation or warning to any person who violates this ordinance.

SECTION 16. SEVERABILITY CLAUSE.

If, for any reason, any portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion of the ordinance shall be deemed a separate, distinct and independent portion and such holdings shall not affect the validity of the remaining portions hereof.

REGULARLY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON THIS 22nd DAY OF May, 1991.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Michael J. Sykes
Chairman

By: [Signature]
Commissioner

By: [Signature]
Commissioner

Approved as to form

By: [Signature]
Office of County Counsel

Attest:
By: [Signature]
Recording Secretary

First Reading: 5/22/91
Second Reading: 5/22/91
Effective Date: 8/19/91