

## Chapter 12.05

### PUBLIC ROADS UNDER COUNTY JURISDICTION

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12.05.005 Short title. This chapter shall be known as "the general road ordinance".

#### 12.05.010 Definitions.

A. The definitions contained in ORS 368.001 shall apply to words and phrases used in this chapter.

B. Unless otherwise stated, or unless the context clearly implies otherwise, the following definitions apply to words and phrases used in this chapter:

1. "Public roads under county jurisdiction" means and includes both county roads and local access roads within the jurisdiction of the county.
2. "Permittee" means any person who is issued a permit under this chapter.
3. "Petitioner" means any person who files a petition for vacation under this chapter.

12.05.015 Purpose. This chapter is intended to exercise the powers of the board over public roads under county jurisdiction to the greatest extent possible under the laws of the State of Oregon.

12.05.020 Applicability. Unless otherwise stated, or unless the context clearly implies otherwise, the provisions of this chapter apply to all public roads under county jurisdiction.

#### 12.05.025 Statutory authority.

A. This chapter supplements ORS Chapter 368, and to the extent permitted by ORS 368.011, the provisions of this chapter supersede contrary provisions of ORS Chapter 368. This chapter also implements ORS 374.305 to 374.340.

B. Unless specifically modified or excepted by this chapter, the provisions of ORS Chapter 368 and ORS 374.305 to 374.340 shall apply to all public roads under county

jurisdiction.

C. Provisions of this chapter that are not specifically authorized by ORS Chapter 368 or ORS 374.305 to 374.340 govern matters of county concern and are adopted pursuant to the powers granted by ORS 203.030 to 203.075.

12.05.030 Maintenance of local access roads.

A. The board may enter into an intergovernmental agreement with a special road district formed under ORS 371.305 to 371.385 for maintenance and repair of a local access road.

B. The county road official may issue permits under section 12.05.150 of this chapter authorizing any person to maintain and repair a local access road.

12.05.040 Damage to public roads under county jurisdiction.

A. Any person who damages any public road under county jurisdiction shall be responsible for, and shall compensate the county for, the cost of repairing such damage, except as provided in subsections B and C of this section.

B. If a special road district maintains and repairs a road pursuant to an intergovernmental agreement with the county, any person who damages the road shall compensate the special road district for the cost of repairing such damage.

C. If a permittee maintains and repairs a road pursuant to a permit issued by the county, any person who damages the road shall compensate the permittee for the cost of repairing such damage.

D. The county or a special road district or permittees who maintain a road may recover the cost of repairing a road from a person who damages the road by prosecuting a civil action in any court of competent jurisdiction.

E. Any damage to a public road under county jurisdiction shall be a public nuisance.

F. This section does not limit:

1. Other remedies to recover compensation for damage to any public road under the jurisdiction of the county that may be available to the county under this chapter or Oregon law;

2. Criminal prosecution under Oregon law; or

3. Administrative proceedings for violations of this code.

12.05.100 Vacation of property.

A. This section supplements and supersedes ORS 368.326 to 368.366 concerning vacation of county property.

B. The county road official is authorized to adopt, amend, or repeal fees for filing petitions for vacation. The fees shall be sufficient to recover the county's costs for investigating the proposed vacation, obtaining a title report on the property to be vacated, preparing the report required by ORS 368.346, and providing notice of the proposed vacation.

C. The county road official shall give the board written notice of any action under subsection B of this section. Any action the county road official shall be deemed to have been fully considered and approved by the board fourteen days after the board receives

notice of such action, unless the board overrules the action by written order. If fourteen days elapse without the board overruling an action of the county road official after proper notice of such action, the board shall execute a written order ratifying such action which shall be filed in the county journal.

D. The board may adopt, amend, or repeal fees by written order, without prior action by the county road official. The board shall give the county road official written notice of any action of the board under this subsection or subsection C of this section.

E. Unless the filing fee is waived under subsection F or subsection I applies:

1. The petitioner shall pay the fee at the time the petition is filed.
2. Upon conclusion of the vacation proceedings if the actual costs of an approved vacation determined pursuant to ORS 368.356(2)(c) exceed the amount of the fee paid by the petitioner, as a condition of vacation the petitioner shall pay the difference to the county.

F. The county road official may waive all or part of the fee for filing a petition for vacation if the county road official determines that the vacation of property pursuant to the petition will provide a substantial monetary benefit to the county. The county road official shall report any waiver of a fee to the board, and the board may overrule the waiver. The board, at the board's initiative, may waive and refund fees.

G. An order vacating property pursuant to ORS 368.356 may be conditioned upon performance of acts by persons who filed the petition for vacation or persons who will receive title to vacated property. A conditional order may assess special benefits for the value of property to be vacated and provide that title to such vacated property will not vest in the person receiving such special benefits until that person compensates the county for the special benefits.

H. If an order vacating property is subject to conditions precedent, the board shall enter a final order upon performance or fulfillment of such conditions.

I. The county shall not require a person to pay a filing fee or costs under subsection E.2 of this section, or assess special benefits to be paid by a person receiving title to vacated property, if the person previously dedicated such property for public use without monetary compensation.

J. An order vacating property may:

1. Provide that title to the vacated property is subject to easements and encumbrances that exist at the time of vacation; and
2. Grant or reserve easements and encumbrances.

K. When title to property is vested in a person pursuant to an order vacating the property, title shall pass without any warranties unless the order states otherwise.

L. Notwithstanding ORS 368.346(3) the board may elect to give notice only by posting and by service on the persons designated in that statute.

#### 12.05.150 Rules and permits required by ORS 374.305 to 374.340.

A. This section implements ORS 374.305 to 374.340. The county road official is authorized to perform, on behalf of the board, all acts authorized or mandated by ORS 374.305 to 374.340, except as otherwise provided in this section.

B. The county road official is authorized to adopt, amend, and repeal rules governing permits for the following activities within, on, or under the right-of-way of any county road or local access road:

1. Construction, reconstruction, grading, surfacing, maintenance, and repair of driveways and approach roads;
2. Construction, reconstruction, installation, removal, maintenance, repair, and other work on pipelines, cables, wires, and other similar facilities;
3. Construction, reconstruction, alteration, removal, maintenance, and repair of crossings, retaining walls, fences, sidewalks, ditches, mail boxes, buildings, culverts, and other structures;
4. Planting trees or other vegetation; and
5. Any other work or activities that may affect the condition of the road.

C. Rules adopted, amended, or repealed by the county road official under this section shall be forwarded to the board of commissioners. Any action by the county road official shall be deemed to have been fully considered and approved by the board fourteen days after the board receives notice of the action unless the board decides to overrule the action. Any action which is overruled by the board under this subsection shall be void. If fourteen days elapse without the board overruling any action of the county road official, the board shall execute a written order ratifying such action which shall be filed in the county journal.

D. The board may, by written order, adopt, amend, or repeal rules pursuant to ORS 374.310 at any time, without prior action by the county road official.

E. The board shall give the county road official written notice of any action of the board under subsection C or subsection D of this section.

F. Local access roads may be excepted from requirements of rules adopted under this section.

G. The county road official is authorized to issue permits for approach roads, driveways, structures, facilities, and activities within road rights-of-way pursuant to ORS 374.305 to 374.340 and rules adopted by the county pursuant to this section.

H. In addition to the matters addressed in ORS 374.310, rules adopted under this section and permits issued under this section may require the permittee to:

1. Release the county from any claims for damages suffered by the permittee arising out of or involving the permittee's approach roads, driveways, structures, facilities, and activities within the road right-of-way;
2. Defend and indemnify the county from all claims, actions, damages, judgments, litigation costs, and other expenses resulting from injury to any person or damage to property, of whatsoever nature, arising out of or involving the permittee's approach roads, driveways, structures, facilities, and activities within the road right-of-way;
3. Provide liability insurance;
4. Provide traffic control while work is being performed;
5. Reimburse the county for costs suffered by the county to repair defects in the road surface and appurtenances that may result from the permittee's activities within the road right-of-way;
6. Warrant the quality of the work;
7. Provide a performance bond, a maintenance bond, a warranty bond, or

other security to cover the permittee's obligations under the permit;

8. Agree to relocate any approach roads, driveways, structures, or facilities to accommodate future reconstruction or relocation of roads;

9. Provide construction plans and specifications prepared by an engineer for any work performed under the permit;

10. Comply with specifications approved by the county road official; and

11. Perform any other act or agree to any other reasonable condition that the county road official deems necessary to protect persons and property.

I. Except for permits granted for utilities that are subject to ORS 758.010, the permittee may be required to reimburse the county for any direct and indirect costs incurred by the county in issuing and administering the permit, including the cost of inspecting work performed under the permit. The county road official or the board may adopt fees to cover the costs described in this section. The procedure for adoption of such fees shall be the same as for fees adopted pursuant to subsection B, C, and D of section 2.05.100. (Ord. 95-5-2, 1995)