

**TITLE V:
PUBLIC WORKS**

Chapter 52

**Utility Right-of-Way
Encroachment
Ordinance**

CHAPTER 52: UTILITY RIGHT-OF-WAY ENCROACHMENT ORDINANCE

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§ 52.01 PURPOSE AND INTENT

It is the purpose and intent of this Chapter to regulate the construction processes of utility companies installing pipes, cables, and their appurtenances within County rights-of-way, in order to protect the physical integrity and investments associated with personal property and County rights-of-way within the legal boundaries of unincorporated Pike County.

(Ord. Passed 10/14/09)

§ 52.02 APPLICABILITY OF REGULATIONS

This Chapter shall apply to the installation of all utility pipes, cables, and their appurtenances within county rights-of-way and within private property adjacent to public and private streets within the legal boundaries of unincorporated Pike County. Utility projects within state rights-of-way in Pike County shall conform to the standards and procedures found in the 2009 GDOT Utility Accommodation Policy and Standards Manual. Utility projects within state rights-of-way in Pike County are under the jurisdiction of the District 3 GDOT Office in Thomaston, Georgia. Public water and sewer construction within Pike County shall be governed by Title V, Chapter 50 “Sewer and Water System” of the Pike County Code, and other standards and specifications of the Pike County Water & Sewerage Authority. Public water, public sewer, and other utility construction within the legal boundaries of municipalities within Pike County shall be governed by the existing standards and specifications of that municipality. If no such standards and specifications exist for the particular municipality within Pike County, then the applicable standards of Chapters 50 and 52 of the Pike County Code shall apply to that municipality.

(Ord. Passed 10/14/09)

§ 52.03 PRE-CONSTRUCTION APPLICATION AND PROCEDURES

(A) Administration.

The Director of the Pike County Public Works Department shall have the authority to administer the requirements, standards and restrictions of this chapter within county road rights-of-way, and in accordance with any requirements, standards and restrictions that the Pike County Public Works Department may establish thereafter.

(B) Permit Fees.

The Director of Public Works of Pike County shall be authorized to charge permit fees to applicable utility companies proposing utility work within county rights-of-way. The amount (and any future changes) of the utility installation / right-of-way encroachment permit fee shall be approved by the Pike County Board of Commissioners, and shall be

posted on the current Pike County fee schedule. Fees may be waived for work conducted on behalf of municipal or governmental utilities.

(C) Application for Permit, Notifications, and Exemptions.

- (1) Any major utility work (new installations, etc.) in a Pike County right-of-way shall require a completed utility permit application with associated fees and scaled drawings showing the location and scope of the work. Only the utility company itself can obtain a permit, and the contractor(s) (along with any subcontractors) intended to do the work must be identified on the permit, accompanied by 24 hour contact information. Utility work in a Pike County right-of-way without a permit, for any type of applicable work for which a permit is required, shall be a violation of this Ordinance. Utility permits provide notice and approval for major projects, including new installations, and other similar matters, and should be applied for at least two weeks before the work is scheduled to begin. Minor matters and certain repairs shall not require a permit, but written notification must be submitted, and acknowledgment of the notice received, prior to any minor work beginning that requires notification, as specified in this section. Proceeding on work that requires a written notification, before notification is submitted, or before acknowledgment of the notice is returned, shall be a violation of this Ordinance. Exempt activities, as specified in this section, require neither a utility permit nor written notification.
- (2) The Pike County Public Works Department has written procedures for applying for a utility permit, and for providing written notification. Such procedures are incorporated herein by reference, and are available from the Department, along with necessary forms. The Department may require such information as it deems necessary prior to issuance of a utility permit. Where applicable, a copy of the approved, finalized franchise agreement between the utility company and Pike County must be furnished to the Pike County Public Works Department and the Pike County Board of Commissioners office before any further permits and notifications governed by this Ordinance can be approved.

(D) Utility Permits Required.

Utility permits shall be required in the following situations:

- (1) Installation of new utilities, for new commercial, residential or industrial developments, projects or subdivisions.
- (2) Work involving underground burial of utilities and overhead work, unless specifically covered under written notification procedures or exemption standards provided in this section.
- (3) Any new utility pole installation; replacements are covered by written notification, and emergency replacements are exempt (see emergency repair regulations).
- (4) Utility tie-ins that require cutting any roadway more than half of the width.
- (5) Linear projects involving multiple service connections or roadway crossings that are not perpendicular.

(E) Written Notifications Required.

Written notification must be submitted, and acknowledgment of the notice received back from the Pike County Public Works Department, prior to any work beginning that requires written notification, as specified below. If a situation arguably falls under both the written notification and the utility permit procedures, the utility permit procedures shall be used, unless otherwise determined by the Public Works Department. Written notification shall be required in the following situations:

- (1) Maintenance, inspection, and/or testing of utilities (including replacement of parts necessary due to damage, deterioration or obsolescence) that would:
 - (a) require blocking of more than one travel lane;
 - (b) require the blocking of one travel lane for a period of longer than two (2) hours in a 24-hour period; or
 - (c) require cutting, trenching or boring in or under the roadbed.
- (2) Installation of lateral service connections to serve occupants of adjacent property, if such connections:
 - (a) introduce any new obstructions onto the right-of-way;
 - (b) require blocking of more than one travel lane;
 - (c) require the blocking of one travel lane for a period of longer than two hours in a 24-hour period; or
 - (d) require cutting, trenching or boring in or under the roadbed.
- (3) Installation of additional appurtenances or attachments to facilities which:
 - (a) Affect vertical or horizontal clearances from the traveled way;
 - (b) Change the rated capacity or transmittance of the facility for which a permit was issued;
 - (c) Require blocking of more than one travel lane;
 - (d) Require the blocking of one travel lane for a period of longer than two hours in a 24-hour period; or
 - (e) Require cutting, trenching or boring in or under the roadbed.
- (4) Any work which requires the blocking of more than one traffic lane for any length of time, or requires blocking one traffic lane for more than two hours in a 24 hour period.
- (5) Any digging in the roadbed with mechanical excavating equipment (i.e., excavating equipment powered by hydraulics, engines or other motors) shall require written notification unless already covered by a utility permit.
- (6) Installation of any temporary structures that are to remain in the right-of-way longer than 24 hours.
- (7) Cutting, trimming or spraying of any trees or shrubs, or other vegetation control, within the right-of-way.
- (8) Any work involving making any pavement cuts, unless specifically exempted below.
- (9) Utility tie-ins that consist of not cutting any roadway more than half of the width of the roadway.
- (10) Boring, punching and directional drilling for service tie-in that is not a linear project and instead results in a perpendicular crossing of the roadway (an 8 by 11 inch sketch drawing of any boring, punch or directional drilling to ascertain its location will be required); linear projects or crossings that are not perpendicular require Utility Permits.

(F) Exemptions

The following activities shall not require a utility permit or written notification, provided they do not also include any activity specifically listed as requiring a utility permit or written notification.

- (1) Routine or periodic maintenance, inspection, and/or testing of utilities (including replacement of parts necessary due to damage, deterioration or obsolescence) that would not:
 - (a) Require blocking of more than one travel lane;
 - (b) Require the blocking of one travel lane for a period of longer than two hours in a 24-hour period; or
 - (c) Require cutting, trenching or boring in or under the roadbed.
- (2) Installation of lateral service connections to serve occupants of adjacent property, if such connections do not:
 - (a) Introduce any new obstructions onto the right-of-way;
 - (b) Require blocking of more than one travel lane;
 - (c) Require the blocking of one travel lane for a period of longer than two hours in a 24-hour period; or
 - (d) Require cutting, trenching or boring in or under the roadbed.
- (3) Installation of additional appurtenances or attachments to facilities that would not:
 - (a) Affect vertical or horizontal clearances from the traveled way;
 - (b) Change the rated capacity or transmittance of the facility for which a permit was issued;
 - (c) Require blocking of more than one travel lane;
 - (d) Require the blocking of one travel lane for a period of longer than two hours in a 24-hour period; or
 - (e) Require cutting, trenching or boring in or under the roadbed.
- (4) Potholing for utility locates, meaning excavating holes no larger than 24 inches square, which must be filled in at the end of the each workday.
- (5) Utility damage repairs created from construction or routine maintenance performed by the Pike County Public Works Department.
- (6) Utility work being performed in a new development within the construction limits of the new development prior to the development's roads, rights-of-way and easements being deeded to the Public Works Department.
- (7) Emergency repairs do not require the giving of written notification before the repair is conducted, but repairs that would otherwise require written notification (i.e., would not be exempt repairs anyway) must provide post-repair written notification as soon as possible, no later than the end of the next business day. The sole exception is repairs that would only require notification due to blockage of a lane for more than two hours, or blockage of more than one lane; post-repair notification is not required for such repairs. However, post-repair notification is required for: repairs that require mechanical excavation; repairs that require boring, cutting or trenching the roadway; repairs that affect vertical clearances; repairs that install replacement poles; and so forth. An emergency repair is defined as an emergency replacement of poles, wires, or other facilities damaged by accidents or natural causes such as wind or ice and when immediate repair is required to repair service, or in cases where there is an imminent threat to public health or safety. In the event of an emergency repair requiring the

blockage of one or more travel lanes, E-911 should be notified as soon as possible by telephone.

(Ord. Passed 10/14/09)

§ 52.04 CONSTRUCTION STANDARDS AND PROCEDURES

(A) All utilities locating their facilities in new residential, commercial, and industrial developments shall locate their facilities pursuant to all applicable Pike County Development Standards and Specifications, and as those may be amended from time to time. All work authorized by any permit issued under this Ordinance shall be in accordance with all applicable Pike County specifications and requirements. All utility work in Pike County right-of-ways shall comply with the provisions of this Ordinance. In the event that the Development Standards conflict with the Georgia Department of Transportation's Utility Accommodation Policy and Standards, Pike County's ordinances will prevail, so long as they are not preempted by state law.

(B) Repair work shall be completed in accordance to Pike County Public Works Department specifications, which shall be provided by the Department at the time the permit is issued. Though the Public Works Department does not have jurisdiction over private streets or drives in Pike County, the utility company and its contractor(s) performing the work shall be responsible for rectifying any disturbance or damage related to the utility work that may occur along private streets or on private property anywhere within Pike County to a minimum standard equal to existing conditions prior to construction activities (sod for sod, concrete for concrete, etc.). Utility companies and their contractors shall first make every effort to avoid disturbance or damage to private property wherever possible during construction activities. Utility companies and their contractors, failing to fully repair disturbances or damages on private property within a specified timeframe determined by the Pike County Public Works Department, shall be subject to citation in Magistrate Court.

(1) Safety Procedures; Securing the Work Site.

The use of the right-of-way shall be minimized to the greatest possible extent. No materials or equipment shall be stored on the right-of-way without prior written approval. No work shall restrict the sight distances for motorist exiting adjacent streets or driveways unless a flagman is provided. The use of flagmen is required on all road and right-of-way utility work involving partial and full blockades of traveled rights-of-way. Minimum distances of lane closures to protect the safety of the work crews and the general public shall be provided by the Pike County Public Works Department. Closure of lanes and traffic flow, and other relevant safety measures, shall be conducted in accordance with the current edition of the Uniform Manual on Traffic Control Devices, latest edition, as well as the DOT Utility Accommodation Policy and Standards manual, latest edition. Debris shall not be placed on the right-of-way, but will be hauled away as the excavation occurs. All trenches opened each day must be backfilled and compacted to 95% standard proctor using appropriate tamping or vibratory equipment unless otherwise approved by the Public Works Department. The Public Works Department reserves the right to require compaction testing from the utility, at the utility's expense, for any work involving cutting, trenching, or backfilling in the roadbed. Any postings must be properly posted and maintained so they are legible. All work areas must be secured at the end of each workday to protect the general public. Cover plates for gaps in the roadway must be secured at the end of each

workday. **Plates MUST be secured so that there is no possibility that the plates can move or shift due to traffic flow. NO open cuts shall be allowed after work has stopped.**

(2) Indemnification

The utility receiving the permit and the contractor shall indemnify and hold harmless Pike County, the Public Works Department and all Pike County employees, and agents, from any and all liability resulting from any work performed under the permit or with written notification in a County right-of-way, as provided in the current edition of the State D.O.T.'s Utility Accommodation Policy and Standards. The utility shall also indemnify the County from any claims, suits or causes of action resulting from any work under the permit or pursuant to written notification. These terms shall become terms of and contained within the permit/permit application and/or Special Assurances Form(s). Such indemnification shall include the costs of attorneys' fees and litigation expenses to enforce this indemnification provision.

(3) Warranty

The utility shall provide a one (1) year warranty for any work conducted under authority of this Ordinance, including any new installation and any repair work. The one year warranty shall commence upon the completion of the work. The warranty shall be supported by a surety in the case of a utility permit, or by the utility owner in the case of actions requiring written notification. The utility shall be responsible to repair any defects in the work or repair, or correct any deficiencies that are not up to the standards and regulations of the County Ordinances.

(4) Surety

Surety shall be required for work under this Ordinance, as specified herein, to ensure performance of the repair in compliance with the standards and regulations of the County and specifically to ensure that roads are repaired properly. Surety shall be in the nature of a performance and maintenance bond or an escrow deposit.

- (a) Form. The surety shall only be issued in a form approved by Pike County. The language of the surety and the term of the surety must be approved by Pike County prior to issuance. Pike County has forms it prefers that surety companies use, and those can be provided upon request; otherwise, the form of the surety shall be approved by the County prior to acceptance of the surety. Any surety bond shall be issued by a company or financial institution authorized to do business in the state of Georgia. Pike County reserves the right to demand a specific form of surety from a developer that has tendered unsatisfactory surety in the past. Escrow shall mean deposit of good funds in a bank of Pike County's choosing pursuant to escrow instructions issued by Pike County.
- (b) Amount. Surety shall be in an amount determined by the Public Works Department based on the size of the project. The Public Works Department may use its discretion when setting the amount of the bond and should consider potential damage to public property or facilities and the relationship to the cost of installation, as well as the factors used in determining whether a project is complex.
- (c) Prerequisite; Calling Surety. No permit shall be issued by the Public Works Department until the surety has been furnished to the County, in a form acceptable to the County. If the developer does not comply with these Regulations, other applicable Pike County Ordinances and regulations, or with the conditions of the

permit after issuance, the County may call the surety, or any part thereof, to be forfeited and may use the proceeds to perform the work or hire a contractor to remedy the defects, whether that means installing soil erosion and sedimentation prevention measures, completing paving and road work, or completing other work.

- (d) Waiver. The Public Works Department shall be authorized, but not required, to reduce or waive the surety requirement for projects undertaken by a municipal government in the County. The surety requirement may also be waived by the Director of Public Works' discretion, for utilities that have demonstrated a history of compliance with this Ordinance, financial responsibility, quality work, and prompt responsiveness.
- (e) Any surety shall be transferable from one site to another within this County. When a permit is secured for right-of-way utility work at a new site, if the party seeking the permit is no longer conducting work on any other site, the surety may be transferred to the new site.
- (f) Any party applying for a permit under this chapter and working multiple sites shall file a surety in the proper amount for each site, said surety shall be made payable to the Pike County Board of Commissioners and conditioned upon the successful completion of operations with a satisfactory examination of all County maintained or sanctioned roads used during the performance of operations.
- (g) The surety shall remain in effect following the cessation of operation until the Public Works Director has made an inspection of the permitted site and certified that the operator has complied with all of the requirements of this Chapter. The Board of Commissioners of Pike County may draw on said surety at any time upon certification by the Public Works Director that:
 - (i) Damage or wear and tear to County maintained or sanctioned road beds, rights of-way, bridges, signage or property of any type has been detected that is clearly attributable to operations covered under this Chapter and under the operator's specific permit;
 - (ii) Operator has been notified of any such damage or wear and tear and requested to replace or repair damaged property;
 - (iii) Operator has failed to repair or replace damaged property within seventy-two (72) hours (three business days) of receipt of notice from the Public Works Director that such damage has occurred and needs to be repaired. Operator shall be responsible for the costs for the repair and replacement of damaged property including temporary repairs made in the discretion of the Public Works Director. Operator shall also be responsible for providing adequate warnings to the public of the damaged property until repaired and/or replaced.
 - (iv) The operator shall notify the Public Works Director forty-eight (48) hours prior to the termination of right-of-way utility work under permit, and upon such notification, the Public Works Director will carry out an inspection of all locations covered by the permit immediately and give written notice to the operator of assayed damages. The operator has seventy-two (72) hours to repair or replace all damage to rights-of-way covered by permit.

(5) Insurance

All utilities operating in Pike County right-of-ways shall also provide proof of liability insurance in a sufficient amount of coverage that shall also cover the actions of the contracts and subcontractors. In lieu of the foregoing, the utility may self-insure for the above-referenced coverage. The utility shall present valid proof of self-insurance upon the Public Works Department's request. The utility shall also require equivalent insurance from their contractors or subcontractors.

(Ord. Passed 10/14/09)

§ 52.05 ENFORCEMENT

(A) Responsible Party.

The utility and any and all contractors or subcontractors shall be held liable for any violations of this ordinance. The permit shall be posted at the site at all times, and a copy of the permit shall also be kept available at all times on the job site when any utility work is underway.

(B) Inspections.

The Pike County Public Works Department reserves the right to inspect the work during such periods as the Department's field inspector(s) deem necessary to check compliance with the terms of the permit, and to require the utility and/or contractor to correct all deviations from the approved permit, or any safety concerns the inspector may have. If the utility and/or contractor do not correct the deviations, the permit can be revoked and a violation cited.

(C) Notice of Defect.

If a utility installation or road repair is found by the Pike County Public Works Department not to be in compliance with the specifications provided or otherwise not in compliance with this Ordinance or the permit, the Pike County Public Works Department shall notify the utility immediately by written Notice of Defect. The utility will then have forty-eight (48) hours to make the necessary repairs or other work, unless longer time is granted by the Department. If the necessary work is not completed within the time limit specified, then the Pike County Public Works Department may make the repairs or conduct the necessary work, and charge the utility for the costs of the materials and labor. The utility will also be in violation of this Ordinance for failing to abide by the Notice of Defect. The Public Works Department in such circumstances would be authorized to issue citations, stop work orders, or seek other relief. In the case of emergencies, the Public Works Department shall give the utility 24 hour contact one hour to respond, and if no action is begun to correct the emergency, shall be authorized to repair the deficiency itself. In such cases, the utility shall be responsible for the costs of labor and materials for the emergency repair. In the event Pike County incurs costs to correct a defect of a Utility Company, the County shall be authorized to withhold all further permits (or issue a stop work order) until the costs incurred by the County are paid.

(D) Violations.

(1) Violations of this Ordinance, or the Procedures adopted under this Ordinance, shall subject the responsible parties to citation in magistrate court. Depending on the severity or scope of the situation, action may also be taken in Superior Court to recover fines and also to obtain injunctive relief to cure defects, or for other necessary action. The County Attorney may initiate such actions. Citations from the Public Works Department

shall be served personally on any responsible party at the site of the utility work, and shall be served on the utility through its designated contact in the County, as indicated on the permit. Since the Planning and Development Department also has citation authority over code enforcement issues, the department may assist the Public Works Department with situations involving this Chapter by: notifying the Public Works Department about utility situations that it may not be aware of, serving citations to responsible parties concerning utility situations that the Public Works Department may not be aware of, and information gathering for current case files held by the Public Works Department. Each day a violation exists can be considered a separate violation.

- (2) Any violation of this Ordinance shall subject all involved parties to citation, including the utility holding the permit, the contractor identified on the permit and any subcontractor or individual actually performing the work. Any or all of the responsible parties may be cited with a violation.
- (3) Minimum fines for violations of this Ordinance shall be imposed as follows. For subsequent violations within a one year period, the minimum fine shall increase as shown below. Fines shall be based on a “rolling” one (1) year period, as follows:
 - (a) First Violation - \$1000 fine.
 - (b) Second Violation - \$1750 fine.
 - (c) Third Violation - \$2500 fine.
 - (d) The one year period begins the day of the first violation, so that one year after the day of the first violation, it expires and is no longer counted.

(E) Stop Work Orders.

The Pike County Public Works Department is authorized to issue stop work orders in the event of a violation of this Ordinance. In the case of a threat to the public health, safety or welfare, or other harm to the County’s property, such orders may be issued without prior issuance of a Notice of Defect. In the case of other violations, a Notice of Defect shall be issued first, and a stop work order may be issued if the necessary repair or work is not completed by the time limit specified. Stop work orders shall be issued in writing to any responsible party at the site of the utility work, and shall be served on the utility through its designated contact in the County, as indicated on the permit. Such stop work orders may be issued only to stop work at the particular location, or may be broadened to halt all work by that same utility in the County. The stop work order shall state the reason for the issuance and the work that needs to be performed to remedy the situation.

(F) Appeals.

Appeals of determinations and interpretations of the Public Works Department may be taken to the Director of Public Works by filing a written notice of appeal within fifteen (15) day of the Department’s decision.

(Ord. Passed 10/14/09)

§ 52.06 LEGAL STATUS PROVISIONS

Whenever the regulations of this Ordinance require impose more restrictive standards than are required in or under any other ordinance or statute, the regulations and requirements of this Ordinance shall govern, so long as they are not preempted by state law. Whenever the provisions of any other statute or ordinance require more restrictive standards than are required by this Ordinance, the provisions of such statute or ordinance shall govern.

(Ord. Passed 10/14/09)

§ 52.07 SEVERABILITY

Any portion of this ordinance that may be deemed void, invalid or otherwise unconstitutional and/or illegal shall be severed from the ordinance without invalidating the remaining provisions of this ordinance.

(Ord. Passed 10/14/09)

§ 52.08 EFFECTIVE DATE

This ordinance shall become effective upon the second reading of the proposed ordinance and upon the affirmative vote of at least three (3) commissioners.

(Ord. Passed 10/14/09)

