ORDINANCE NO. 367

AN ORDINANCE OF THE COUNTY OF HOOD RIVER ADDING A NEW CHAPTER 24 TO TITLE 10, ROADWAYS AND TRAFFIC, OF THE HOOD RIVER COUNTY CODE DETAILING CONSTRUCTION WITHIN A PUBLIC RIGHT OF WAY

THE PEOPLE OF HOOD RIVER COUNTY DO ORDAIN AS FOLLOWS:

SECTION 1. TITLE

This Ordinance shall be known as Ordinance No. 367 and Exhibit A, attached hereto and incorporated herein by this reference shall be known as the “Construction within a Public Right of Way Ordinance.”

SECTION 2. AUTHORITY

This Ordinance is adopted pursuant to Article I of the Hood River County Home Rule Charter.

SECTION 3. PURPOSE

The purpose of this Ordinance is to detail permit and other requirements for construction within a public right of way in Hood River County.

SECTION 4. ADOPTION

The Board of County Commissioners hereby adopts the Hood River County Construction within a Public Right of Way Ordinance as shown in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 5. SEVERABILITY

If for any reason any court of competent jurisdiction holds any portion of this Ordinance, including its attachments or any portion therein, to be invalid, and such holding is upheld on any appeal, such portion shall be deemed a separate, distinct and independent portion. Any such holding shall not affect the validity of the remaining portions.

SECTION 6. SCRIVENER’S ERRORS

A scrivener’s error in any portion of this Ordinance or its attachments may be corrected by order of the Board of County Commissioners.

SECTION 7. EFFECTIVE DATE

If passed, this Ordinance shall become effective on April 18, 2019.
DATED THIS 18\textsuperscript{th} day of March 2019.

HOOD RIVER COUNTY BOARD OF COMMISSIONERS

\hspace{1cm} Michael Oates, Chair

\hspace{1cm} Karen Joplin, Commissioner

\hspace{1cm} Rich McBride, Commissioner

\hspace{1cm} Robert Benton, Commissioner

\hspace{1cm} Les Perkins, Commissioner
10.24.005 Definitions

Unless the context requires otherwise, for the purposes of this Chapter, the terms set forth below shall be defined as follows:

(1) “Applicant” means any person engaged in the process of applying for a permit pursuant to this chapter.

(2) “ASTM” means the American Society for Testing and Materials.

(3) “Board of Commissioners” means the Board of Commissioners of the County of Hood River, Oregon.

(4) “County” means Hood River County.

(5) “Director” means the Director of Public Works for Hood River County, or their authorized representative.
(6) “Emergency” means an unforeseeable occurrence which requires immediate attention to avoid or mitigate significant injury to persons or property, or as defined by ORS 279A.010(f).

(7) “Facility” means a water, sewer, gas, electric, communication or similar service line, fixture or related appurtenance, and driveways or other vehicular access ways.


(9) “OTTCH” means the Oregon Temporary Traffic Control Handbook, latest edition, as published by the Oregon Department of Transportation.

(10) “Permittee” means the holder of a valid permit issued pursuant to this chapter.

(11) “Person” means an individual, or any legal entity authorized by law to act on its own behalf, including but not limited to, organizations, corporations, limited liability companies and partnerships.

(12) “Public Right-of-Way” means any public road, including county roads, within the County’s jurisdiction and authority under ORS Chapter 368.

(13) “Road Approach” means the construction or alteration of a facility which provides ingress or egress from a Public Right-of-Way.

(14) “Roadway” means that portion of a road or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.

(15) “Survey Monument” means a physical marker or monument that sets a reference point for surveying real property.

(16) “Work” means any form of installation, removal, construction or maintenance, including excavation work, snow removal, tree trimming or other management of vegetation, to a public or private facility or utility.

10.24.015 Permit Required

(1) No Person shall install any facility or perform work within the public rights-of-way in Hood River County without a valid permit issued pursuant to this chapter.

(2) No Person shall install a Road Approach within the public right-of-way in Hood River County without a valid permit issued pursuant to this chapter.
Permits issued under this chapter shall not affect other applicable provisions under local, state or federal law.

10.24.025 Permit Applications

(1) The following information shall be included in any application for a permit pursuant to this chapter:

(a) The name, address, email address, and telephone number of the Applicant;

(b) The location where the work is to be performed;

(c) The nature, extent and purpose of such work;

(d) The date work is expected to begin, and the amount of time anticipated to complete the work;

(e) The name, address, email address and telephone number of the person or firm who will perform the proposed work;

(f) A plan showing the proposed work and its location with respect to roads, culverts, ditches, and all existing facilities within the right-of-way, including the location and depth of all underground utilities and any potential conflicts;

(g) The amount and type of vehicles and equipment to be used during the activity;

(h) A traffic plan to maintain the normal flow of vehicular, pedestrian, and bicycle traffic through the right-of-way during performance of the work;

(i) An agreement that the Applicant will comply with all applicable regulations, ordinances and laws relating to the intended work;

(j) An agreement that the Applicant will hold the County harmless and otherwise indemnify the County against any liability caused by the proposed work;

(k) An agreement to obtain liability insurance in an amount determined by the Director pursuant to section 10.24.035;

(l) An agreement to obtain a performance bond in an amount determined by the Director pursuant to section 10.24.035; and

(m) Identification of any survey monument expected to be disturbed during the course of work.
(2) Permit applications shall be accompanied by payment of an application fee in an amount established under the Hood River County Fee Schedule, approved by resolution from the Board of Commissioners.

10.24.035 Liability insurance; performance bond

(1) Upon initial review of an application under this chapter, the Director shall determine:

(a) The minimum amount of liability insurance required to adequately cover the potential damages or other liabilities that may arise from:

(i) The performance of the proposed work; or

(ii) Any physical alteration to the right-of-way, roadway or other public improvements.

(b) The minimum amount of a performance bond or cash deposit to assure the timely completion of the work in the event the Applicant fails to do so.

(2) No permit shall be issued under this chapter unless and until the County receives:

(a) A valid certificate of liability insurance, certifying that the Applicant has secured liability insurance coverage:

(i) In an amount equal to or greater than the amount required by the Director of Public Works; and

(ii) Naming the County as an additional insured party.

(b) A valid performance bond in an amount equal to or greater than the amount determined by the Director of Public Works, insuring the Applicant's performance of all the terms and conditions of the permit.

(c) An agreement that the Applicant agrees to all terms and conditions set forth in the permit.

10.24.045 Permit conditions; authority

(1) The Director is authorized to review permit applications made under this chapter, issue permits and impose reasonable permit terms and conditions directing the means, manner and materials to be used in any construction within a right-of-way, including but not limited to, terms and conditions governing:

(a) Excavation, including the control or disposal of excavated materials;
(b) Backfill;
(c) Temporary and permanent pavement;
(d) Trenching and ditches;
(e) Roadway and shoulder construction or repair;
(f) Measures to protect the public and minimize inconvenience;
(g) Measures to control traffic; and
(h) Measures to prevent environmental damage.

(2) The Director may, at their discretion, impose additional terms and conditions directing the means and manner to be used in any construction within a right-of-way that would otherwise require the cutting of a paved roadway constructed or improved within the prior three (3) years.

(3) The Director may, at their discretion, waive any requirement for the issuance of a permit made under this chapter upon finding that the requirement cannot be reasonably met and when a safe, practical alternative can be determined.

(4) Permits issued under this chapter may be approved on a continuing basis for recurring, intermittent work.

10.24.055 County liability

The County shall not be liable for any tort or contract damages based upon:

(1) The issuance or non-issuance of a permit pursuant to this chapter; or

(2) The inspection, approval, or the failure to inspect or approve of, work performed pursuant this chapter.

10.24.065 Utility Agreements

(1) The County may enter into an agreement with a public utility or contractor regarding the installation and maintenance of facilities within one or more rights-of-way.

(2) An agreement between the County and a utility company or contractor made pursuant to subsection (1) may expressly waive the application of all or part of this chapter to work performed pursuant to such agreement.
10.24.075 Inspections; authority

(1) The Director may inspect permitted work at any time.

(2) The Director may order all work to cease immediately upon finding reasonable cause to believe there has been a violation of this chapter or of the terms and conditions of an issued permit.

(3) The County may recover its costs to enforce this chapter including costs to abate or repair improper work.

(4) No work shall be deemed complete prior to final inspection by the County.

(5) Permittees shall request an inspection prior to filling any excavation.

(6) Permittees shall be responsible for requesting all required inspections.

(7) The presence of County officials, employees or agents during the work shall not relieve the Permittee of any responsibilities.

(8) The County’s acceptance or approval of work shall not waive the County’s right or authority to subsequently assert a claim against a Permittee and the Permittee’s surety for incomplete or defective work.

10.24.085 Repairs to permitted work

(1) Permittees may repair existing facilities pursuant to their original permit provided the requisite performance bond and liability insurance are still in effect.

(2) Permittees seeking to repair existing facilities shall notify the Director of Public Works at least 48 hours prior to performing such repair.

(3) All repair work performed under an original permit shall be subject to all applicable terms and conditions of the permit and may be subject to the review and approval of a new traffic control plan.

10.24.095 Safety

(1) No Permittee shall perform work in a manner that unduly interferes with or endangers vehicular, pedestrian or bicycle traffic.

(2) Throughout the performance of the work Permittees shall:

   (a) Abide by the MUTCD and OTTCH throughout the work;
(b) Be responsible for providing signs, barriers, warning devices and personnel sufficient to protect the safety of workers and the public;

(c) Maintain access to fire hydrants, alarm boxes and other emergency facilities at all times; and

(d) Keep all roads or streets clear of all debris, refuse and material; all dirt shall be removed from the pavement surface of all non-closed roads at the end of work each day.

(3) No Permittee shall allow more than 300 feet of trench to be open at one time.

(4) No Permittees shall allow a trench running parallel to the roadway to be open between the hours of 6:00 P.M. and 7:00 A.M. the following day.

10.24.105 Unsafe locations

(1) Permits may not be issued for any location where, as determined by the Director, the traffic, grade, terrain, vegetation or other environmental factors significantly increase the risk of damage to persons, property, or interferes with the proper placement and function of traffic related facilities without additional improvements or mitigation measures;

(2) Any additional improvements or mitigation measures required by a permit issued under this chapter shall be maintained in perpetuity by the Permittee until the permit is surrendered.

10.24.115 Survey monuments

(1) No Permittee shall remove or otherwise disturb a survey monument without prior written permission from the County Surveyor.

(2) The Permittee shall be responsible for all costs incidental to the proper replacement of any survey monument disturbed under section (1) as directed by the County Surveyor.

10.24.125 Prohibited work

(1) Permittees shall not:

   (a) Install facilities within a ditch without the Director’s prior written permission;

   (b) Install facilities to, thru, or on a county bridge without the Director’s prior written permission;
(c) Backfill any excavated portion of a public right-of-way without the Director’s prior written permission;

(d) Block or divert drainage-ways or drainage structures in a manner that significantly alters water flow downstream or to properties adjacent to a public right-of-way;

(e) Plant any vegetation within a public right-of-way that exceeds, or may likely exceed, a height of 3 feet; or

(f) Install a sign within a County right-of-way, except as required by this chapter.

10.24.135 Other facilities within the right-of-way

Permittees shall be solely responsible for identifying and protecting all utilities and features within the right-of-way and shall be responsible for any damage resulting from the Permittee’s acts or omissions.

10.24.145 Public peace

(1) Permittees shall endeavor to prevent unnecessary inconvenience to the public and neighboring residents during the work, including but not limited to, controlling noise, dust and debris.

(2) Except in emergencies, Permittees shall not perform work between the hours of 7:00 P.M. and 7:00 A.M.

10.24.155 Abandonment of facilities

(1) In the event a facility is to be abandoned, the Person owning or otherwise controlling the facilities must notify the Director in writing no less than 30 (days) prior to such abandonment.

(2) The director may, then or at any point in the future, require the owner to remove such abandoned facility or pay the cost of its removal or the cost of any repair resulting from its existence.

10.24.165 Removal; relocation

(1) Pursuant to ORS 758.010(2), the Director may order the removal, relocation or repair of a facility by written notice to the Permittee.

(2) Permittee shall be responsible for all costs attributed to any removal, relocation or repair ordered pursuant to this section.
(3) Within 30 days of receipt of notice under this section, Permittee shall provide a written response setting for the necessary arrangements in accordance with the written notice and instructions received.

10.24.175 Penalty.

(1) Performing work in a public right-of-way without, or in violation of the terms of a permit issued pursuant to this chapter is a Category I civil violation under HRCC (Chapter) 1.08.

(2) Civil violations under this chapter shall be prosecuted in accordance with HRCC Chapter 1.08.

(3) The County may adopt additional specific civil penalties for violations of this title in accordance with HRCC 1.08.175.