

GWINNETT COUNTY
BOARD OF COMMISSIONERS
LAWRENCEVILLE, GEORGIA

ORDINANCE ENTITLED: Utility Accommodation in Rights-of-way

READING AND ADOPTION: March 7, 2017

At the regular meeting of the Gwinnett County Board of Commissioners held in the Justice and Administration Center, Auditorium, 75 Langley Drive, Lawrenceville, Georgia.

Name	Present	Vote
Charlotte Nash, Chairman	Yes	Yes
Jace Brooks, District 1	Yes	Yes
Lynette Howard, District 2	Yes	Yes
Tommy Hunter, District 3	No	Absent
John Heard, District 4	Yes	Yes

On motion of Commissioner Howard, which carried 4-0, the Code of Ordinances of Gwinnett County is hereby amended by adding a new Section 90-22 – Utility Accommodations in Rights-of-way.

WHEREAS, Gwinnett County is experiencing significant numbers of utility facilities being built in, on, along, over, or under the public rights-of-way for the county road system under the jurisdiction of the Gwinnett County Board of Commissioners; and

WHEREAS, the construction of utility facilities in, on, along, over, or under the county road system requires uniform and controlled installation of such utility facilities in accordance with a permit to ensure that the health and safety of the traveling public is maintained and that the public investment in the rights-of-way of the county road system is protected; and

WHEREAS, O.C.G.A. § 32-4-42 (6) authorizes Gwinnett County to grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal,

removal, and relocation of utility lines, pipes, cables, facilities and other equipment in, on, along, over, or under public roads of the county road system; and

WHEREAS, such utility accommodation regulations cannot be more restrictive with respect to utilities affected than are the equivalent regulations promulgated by the Georgia Department of Transportation with respect to utilities on the state highway system; and

WHEREAS, the Georgia Department of Transportation recently promulgated its 2016 Utility Accommodation Policy and Standards manual; and

WHEREAS, to ensure reasonably uniform practices throughout the State of Georgia, the Georgia Department of Transportation encourages local governments to adopt the 2016 Utility Accommodation Policy and Standards manual.

NOW, THEREFORE, BE IT ORDAINED that the Gwinnett County Board of Commissioners hereby amends the Code of Ordinances of Gwinnett County, Chapter 90, Article II, Division I by adding a new Section 90-22 Utility Accommodations in Rights-of-way to read as follows:

Sec. 90-22 Utility accommodations in rights-of-way.

(a) *Adopted.* The 2016 Utility Accommodation Policy and Standards manual, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, except Appendix B (Permit Forms and Supporting Documents), promulgated by the State of Georgia Department of Transportation, is adopted by reference and incorporated in this article as if fully set forth herein, subject to all amendments, deletions and modifications contained in this article. A copy of the manual shall be maintained at the offices of the director of transportation or his/her designee and the clerk of the board of commissioners and open for public inspection.

(b) *Amendments.* The 2016 Utility Accommodation Policy and Standards manual promulgated by the state department of transportation, adopted in Section 90-22 (a) is amended as follows:

(1) *Definitions and term substitutions.* The following italicized terms shall be substituted with the non-italicized term, wherever such italicized term appears in the manual:

Attorney General of Georgia: County attorney.

Commissioner: Director, county Department of Transportation.

Department: County Department of Transportation.

Department Office of Financial Management: County Department of Transportation director or his/her designee.

Design Office Head: County Department of Transportation director or his/her designee.

District construction office: County Department of Transportation.

District or area engineer: County Department of Transportation director or his/her designee.

District Office of Environmental Services: County Department of Transportation.

District utilities office: County Department of Transportation.

GDOT Project Number: County Department of Transportation project number.

GDOT utility webpage: County Department of Transportation webpage.

GUPS: the Gwinnett County Department of Planning and Development's electronic permitting system.

Highway: Any road that is part of the county road system.

Real property owned by Department: rights-of-way that are part of the County road system and maintained by the County Department of Transportation.

Superior Court of Fulton County: Superior Court of Gwinnett County.

State: County.

State bridge and structural design engineer: County Department of Transportation director or his/her designee.

State highway (chief) engineer: County Department of Transportation director or his/her designee.

State Highway System: the Gwinnett County road system

State law department: County Law Department.

State utilities engineer: County Department of Transportation director or his/her designee.

State utilities office: County Department of Transportation.

Statewide emergency operation number: 911.

Telephone booth shall include any booth or structure, to be used by the public at large, which houses a communications link for local or long distance communications, including but not limited to data communication ports, terminals, kiosks, structures or jacks for connection with local or long distance communications.

(2) *Administration.* The director of the county department of transportation shall have the authority to administer the state department of transportation's utility accommodation policy and standards manual, as amended from time to time by the county, on the county road system and in accordance with any procedures the county department of transportation may establish thereunder.

(3) *Fees.* The board of commissioners shall be authorized to charge fees in accordance with the state department of transportation's utility accommodations policy and standards and any other applicable laws that exist now or may be enacted in the future. Fees shall be determined by the director of the department of transportation. Any fee schedule shall be posted at the offices of the director of transportation or his/her designee and open for public inspection.

(4) *Deleted provisions.* The following chapters and sections of the 2016 Utility Accommodation Policy and Standards manual are deleted in their entirety:

- a. Section 2.8.C;
- b. Section 2.8.D;
- c. Section 3.2.C;
- d. Section 3.5.B Paragraph #3;
- e. Section 4.0.C and all references in the Manual to Overhead/Subsurface Utility Engineering (SUE) investigations or procedures;
- f. Section 4.1.A;
- g. Section 4.1.B;
- h. Section 4.1.C.1;
- i. Section 4.1.C.3;
- j. Section 4.2.A.2. Case VII;
- k. Section 4.2.A.2. Case VIII;

l. Section 5.8.A;

m. Chapter 7.

(5) *Amended provisions.* The following sections of the 2016 Utility Accommodation Policy and Standards manual are amended as follows:

a. *Section 2.5.G* of the manual is amended by revising the second sentence to read as follows: "Private Lines may only cross the right-of-way with the prior consent of the county department of transportation and by conforming to all applicable requirements contained in this Manual."

b. *Section 3.5.F* of the manual is amended by adding the following sentence to the end of the section: "A Utility may be required to post a bond at the discretion of the County department of transportation".

c. *Section 4.0.A.3* of the manual is amended by deleting the reference to "GUPS Permit Form DOT 8413A" and substituting therefor "County department of transportation permit".

d. *Section 4.1.C.4* of the manual is amended by deleting the paragraphs titled "Escalation Process Step 2" and "Escalation Process Step 3" in their entireties, and amending the remaining portions to read as follows:

"4.1.C.4 Work Plan Approval - It is the responsibility of the County department of transportation director or his/her designee to review all Work Plans submitted by the Utility found within a project's limits. If upon review, the County department of transportation director or his/her designee determines a Work Plan to be unreasonable based upon the required scope of utility adjustment and/or relocation required to accommodate a project; the County department of transportation director or his/her designee will initiate the following process to resolve such disputes involving the Work Plan whenever they may occur.

"After the County department of transportation director or his/her designee has reviewed and determined that the submitted Work Plan is unreasonable for the proposed utility work in question, the County department of transportation director or his/her designee will notify the Utility of such opinion through written correspondence. Such written correspondence shall detail the items in question and request the Utility to justify or revise the Work Plan accordingly. The Utility will respond to this letter within 10 business days. The response shall include justification

or proposed revisions to comply with the items in question identified by the County department of transportation director or his/her designee. If the Work Plan dispute cannot be resolved through the efforts described above after 20 business days from the date provided in the department of transportation's original written correspondence, said dispute may be escalated by the department of transportation's director or his/her designee or the Utility to the Director of the department of transportation and a designated representative of the Utility who has authority to settle the dispute and who is at a higher level of management than the person with direct responsibility for the management of the project. If the parties are unable to resolve the dispute, either may select relief from such other remedies as may be available at law or in equity."

e. *Section 4.2.B.1* of the manual is amended to read as follows:

"4.2.B.1 Determination of Eligibility. Whenever a claim for reimbursement is made by a Utility, a written application for such reimbursement shall be submitted by the Utility to the County department of transportation, along with such supporting documentation for such claim as may be required in the discretion of the department of transportation. Upon review and verification of the information provided by the Utility, the department of transportation shall make a determination of eligibility for reimbursement."

f. *Section 4.2.B.4* of the manual is amended by adding the following language to the end of the paragraph:

"For above-ground facilities, other factors may be considered by the County department of transportation in determining the allocation and proration of costs to be reimbursed to the Utility (including, but not limited to, the overhang of utility facilities into existing rights-of way)."

g. *Section 4.2.F.2* of the manual is deleted in its entirety and the following language inserted in lieu thereof:

"After review of such information, the County department of transportation will prepare the agreement and coordinate approval and execution. All agreements shall be in writing and executed by the County and the Utility".

h. *Section 4.2.F.3* of the manual is amended to read as follows:

"4.2.F.3 Reviews and Approvals. Agreements will be approved and executed by the Chairman of the Board of Commissioners, or as otherwise approved by the Gwinnett County Code of Ordinances. The prior concurrence of the Director of the County department of transportation and County Attorney may also be required."

i. *Section 4.4.B* of the manual is amended by deleting the paragraphs titled "Escalation Process Step 1", "Escalation Process Step 2" and "Escalation Process Step 3" in their entirety, and amending the remaining portions to read as follows:

"4.4.B Revised Work Plan Approval - If previously unforeseen utility removal, relocation, or adjustment work is found necessary by the County department of transportation, the Utility or the department's Contractor after the letting of a project, the Utility shall provide a revised work plan within 30 calendar days after becoming aware of such additional work or upon receipt of the Department's written notification advising of such additional work. The incorporation of this revised work plan into the overall project schedule is not intended to correct errors and omissions with the originally approved Work Plan submitted to the department. If such errors or omissions occur, it will be the Utility's responsibility to adhere to the original work plan submitted and approved during the preconstruction phase of the project's development. However, when it is deemed appropriate for a revised Work Plan to be submitted the following procedure shall be followed for its approval:

"It is the responsibility of the County department of transportation director or his/her designee to review all revised Work Plans submitted by the Utility found within a project's limits. If upon review, the County department of transportation director or his/her designee determines a revised Work Plan to be unreasonable based upon the required scope of utility adjustment and/or relocation required to accommodate a project, the County department of transportation director or his/her designee will initiate the same process to resolve such disputes as set forth in Section 4.1.C.4."

j. *Section 4.4.C* of the manual is amended to read as follows:

"4.4.C. Procedures for Utility Damages or Delay Costs - If the Utility fails to provide a Work Plan or fails to complete the removal, relocation, or

adjustment of its facilities in accordance with the Work Plan or Revised Work Plan approved by the County department of transportation, then the Utility may be liable to the department or its Contractor for delay costs and damages incurred by the department or its Contractor which grow out of the failure of the Utility to carry out and complete its work accordingly. However, the following escalation process shall be utilized by the department, its Contractor, and the Utility to resolve such disputes regarding damages or delays prior to such claims being brought before a court of competent jurisdiction.

"Escalation Process Step 1 - It shall be the Contractor's responsibility to coordinate and track each Utility's progress in relation to the Work Plan or Revised Work Plan previously approved by the County department of transportation director or his/her designee. Once the Contractor has determined that the Utility's work progress is at least 20% behind the approved Work Plan, the Contractor will notify the Utility and the department of such apparent delay through written correspondence. Such written correspondence shall detail the delay in question and request the Utility to submit a proposal on how the Utility plans to rectify such delay and maintain the project's schedule prescribed by the previously approved Work Plan. The Utility will respond to this letter within 10 business days. The response shall include a proposal to cure the delay identified by the department's Contractor. In some cases, the complexity of the project may require that a utility coordination meeting be held to address the issues identified by the department's Contractor. If the Utility determines that this is the case, then the Utility's response letter shall include a request to hold a utility coordination meeting with the department's Contractor and the County department of transportation for utility delay resolution. If the utility delay dispute cannot be resolved through the coordination efforts described above after 20 business days from the date provided in the Contractor's original written correspondence, said dispute may be escalated for further consideration as provided in Escalation Process Step 2 below.

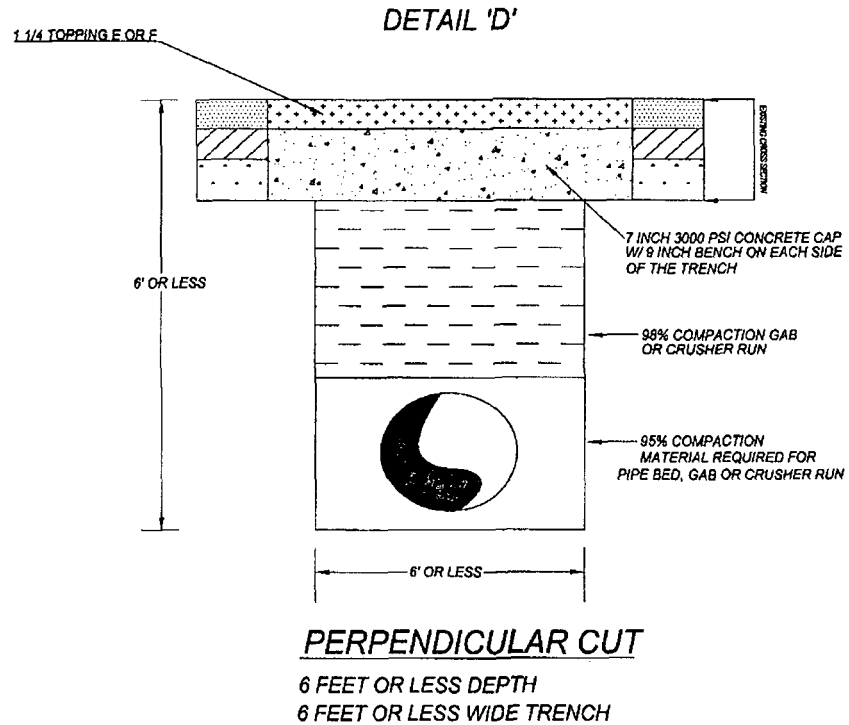
"Escalation Process Step 2 - After the County department of transportation director or his/her designee has reviewed and determined that the submitted Work Plan is unreasonable for the proposed utility work in question, the County department of transportation director or his/her designee will notify the Utility of such determination through written correspondence. Such written correspondence shall detail the items in question and request the Utility to justify or revise the Work Plan accordingly. The Utility will respond to this letter

within 10 business days. The response shall include justification or proposed revisions to comply with the items in question identified by the County department of transportation director or his/her designee. If the Work Plan dispute cannot be resolved through the efforts described above after 20 business days from the date provided in the department of transportation's original written correspondence, said dispute may be escalated by the department of transportation director or his/her designee or the Utility to the Director of the department of transportation and a designated representative of the Utility who has authority to settle the dispute and who is at a higher level of management than the person with direct responsibility for the management of the project. If the parties are unable to resolve the dispute, either party may select relief from such other remedies as may be available at law or in equity. The Utility shall have a period of 45 days from the date of receipt of the department of transportation's original written correspondence to either pay the amount of the damages or delay costs to the department or its Contractor or seek relief from this determination by available legal or equitable remedy".

k. *Section 5.2.F.2.b.1* is amended to read as follows:

"1. Asphalt Concrete Pavements- a minimum depth of 48 inches from the top of the pipe to the finished asphalt grade shall be required.

"The bottom of the trench under the pipe shall be bedded up to the haunches of the pipe. Backfill shall be of a suitable material compacted to 98% compaction. The trench shall have a minimum clearance of 6 inches on either side of the pipe for the maximum amount of compaction effort. A minimum of 12 inches graded aggregated base backfill shall be placed in 6 inch compacted layers at 98% compaction. A 7 inch asphalt base shall be placed in 2 layers with an additional one inch (1") asphalt topping overlay. The existing asphalt will be saw cut along the edge for the full depth of existing asphalt. A tack coat will be required between the asphalt base course and the asphalt topping overlay coat. The asphalt topping shall match the existing roadway asphalt. When the concrete curbing is cut it shall be replaced from construction joint to construction joint (See attached pavement repair diagram titled Detail 'D')."



I. Section 5.2F.2.c. of the manual is amended by adding the following language to the end of the paragraph: "Milling and resurfacing may be required by the County department of transportation".

NOW, THEREFORE, BE IT FURTHER RESOLVED that this ordinance shall be effective upon adoption.

BE IT FURTHER RESOLVED that all ordinances, regulations or parts of the same in conflict with this Resolution are hereby rescinded to the extent of said conflict.

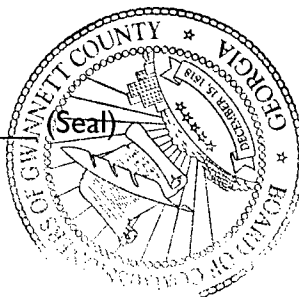
GWINNETT COUNTY BOARD OF COMMISSIONERS

By: Charlotte J. Nash
Charlotte J. Nash, Chairman

Date Signed: 3/7/17

ATTEST:

By: Diane Kemp
Diane Kemp, County Clerk



APPROVED AS TO FORM:

By: D. Stuart Morelli
D. Stuart Morelli, Senior Assistant County Attorney