

**ORDINANCE AMENDING THE  
BARTOW COUNTY UTILITY ACCOMMODATION ORDINANCE**

AN ORDINANCE OF THE COUNTY COMMISSIONER OF BARTOW COUNTY SITTING FOR COUNTY PURPOSES FOR THE PURPOSE OF **AMENDING THE UTILITY ACCOMMODATION ORDINANCE PERTAINING TO RIGHT-OF-WAY ENCROACHMENTS, PAVEMENT CUTS, UTILITY WORK, PERMISSION, RESTORATION, OBSTRUCTIONS, AND UTILITY LOCATIONS IN RIGHTS OF WAY; IMPOSING MAINTENANCE AND BONDING REQUIREMENTS; ADOPTING THE GEORGIA UTILITY ACCOMMODATION POLICY AND STANDARDS MANUAL; PROVIDING FOR ENFORCEMENT AND PUNISHMENT;** AND FOR OTHER PURPOSES AT THE REGULAR MEETING OF THE COMMISSIONER OF BARTOW COUNTY HELD ON THE 4th DAY OF MAY, 2006.

---

**WHEREAS**, Bartow County has previously adopted a Utility Accommodation Ordinance, dated December 4, 2002, pertaining to pavement cuts, utility work, permission, restoration, obstructions, utility locations in rights of way, to adopt the Georgia utility accommodation policy and standards manual, to correspond to the circumstances in Bartow County, which ordinance is administered, interpreted and enforced by the Roads Department; and;

**WHEREAS**, Bartow County holds the rights of way within its geographical boundaries as an asset in trust for its citizens; and

**WHEREAS**, pursuant to O.C.G.A. § 36-1-20, “[t]he governing authority of each county, for the purpose of protecting and preserving the public health, safety, and welfare, is authorized to adopt ordinances for the governing ... of the unincorporated areas of the county ... and may provide for the implementation and enforcement of any power or duty vested in the County governing authority”; and

**WHEREAS**, Article 9 § 2, Para. III of the Georgia Constitution provides that a county may exercise the powers over and provide services for “Public Transportation”; and

**WHEREAS**, State law O.C.G.A. § 32-4-42 grants to counties the power to “grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal, removal and relocation of pipes, mains, conduits, cable wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any utility, in, on, along, over, or under the public roads of the county” and further, mandates “[i]t shall be the duty of the county to ensure that the normal operation of the utility does not interfere with the use of the county road system”; and

**WHEREAS**, State law O.C.G.A. § 32-4-42 further states, “the county may require application in writing specifically describing the nature, extent, and location of the portion of the utility affected and may also require the applicant to furnish an indemnity bond or other acceptable security conditioned to pay any damages to any part of the county road

## UTILITY ACCOMMODATION ORDINANCE

system or to any member of the public caused by work of the utility performed under authority of such permit”; and

**WHEREAS**, the County and other public entities have invested millions of dollars in public funds to build, beautify, and maintain the rights-of-way; and

**WHEREAS**, Bartow County is experiencing rapid growth that brings with it increased demand on its rights of way; and

**WHEREAS**, it is necessary that the County and the utilities effectively communicate and work together in order to accomplish the goals of this policy and implement plans for the development of both Bartow County and the various utilities’ infrastructure; and

**WHEREAS**, it is not feasible to likewise increase the amount of rights of way currently available; and

**WHEREAS**, because of immediate safety and welfare concerns for the citizens of Bartow County, the need to have public utilities services provided on an uninterrupted basis, and concerns for the protection of the County’s and other entities’ property currently located within the rights of way, it is in the best interest of the County, its citizens, and current and future users of the rights of way to manage the County’s rights of way to the fullest extent provided under the law without creating any barriers to entry.

**NOW THEREFORE, BE IT ORDAINED** and it is hereby ordained, by virtue of the authority vested in the Commissioner, that the existing Bartow County Utility Accommodation Ordinance is amended and replaced with the following Ordinance:

### **BARTOW COUNTY UTILITY ACCOMMODATION ORDINANCE**

#### **SECTION I. Utility Accommodations in Rights of Way**

(a) 1988 DOT Utility Manual Adopted by Reference.

The 1988 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, as may be amended from time to time, is adopted by reference and incorporated herein as if fully set forth herein, subject to all amendments and modifications contained in this Ordinance. A copy of the manual shall be maintained at the offices of the Bartow County Road Department and the Clerk of the Commissioner and open for public inspection. The manual and this Ordinance shall govern all utility work in Bartow County rights-of-way, and all utility work shall comply with same.

## UTILITY ACCOMMODATION ORDINANCE

(b) Amendments.

The 1988 Utility Accommodation Policy and Standards manual promulgated by the State of Georgia Department of Transportation, as may be amended from time to time, adopted in Section I(a) is amended in order to equate state definitions and provisions with their appropriate and equivalent county counterparts, such that a policy shall be implemented to reflect the intent and effect of the state right-of-way policy as it would logically apply to unincorporated Bartow County's rights of way. Therefore, the following terms as used in the DOT manual shall be replaced as follows:

**Commissioner** = Department Head, Bartow County Road Department.

**Department** = Road Department.

**District Engineer** = Road Department Superintendent or his/her designee.

**Highway** = Any road that is part of the Bartow County Road System.

**Roadbed** = the portion of the highway that includes the pavement structure, shoulder and front slopes.

**State** = County.

**State Bridge and Structural Design Engineer** = Road Department Superintendent or his/her designee.

**State Highway (Chief) Engineer** = Road Department Superintendent or his/her designee.

**State Utilities Engineer** = Road Department Superintendent or his/her designee.

**“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.

**“Utility”** (as defined in the state's policy) shall read: All privately, publicly or cooperatively owned systems for producing, transmitting or distributing communication, data, information, telecommunication, cable television, power, electricity, light, heat, gas, oil, crude products, water/sewer, steam, fire and police signals, traffic control devices, and street lighting systems, and housing or conduit for any of the foregoing, which directly or indirectly serve the public or any part thereof. The term “utility” may also be used to refer to the owner, operator, provider, servicer, or any agent thereof, of any above-described utility or utility facility.

### **Section II. Utility Locations in Rights of Way; Standards; Repair Standards**

All utilities locating their facilities in new residential and commercial developments shall locate their facilities pursuant to the Bartow County Development Regulations, and the Bartow 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 Bartow County specifications and

## UTILITY ACCOMMODATION ORDINANCE

requirements. All utility work in Bartow County right-of-ways shall comply with the provisions of this Ordinance. In the event that the Development Regulations or Development Standards conflict with the Georgia Department of Transportation's Utility Accommodation Policy and Standards, Bartow County's ordinances will prevail, so long as they are not preempted by state law. Repair work shall be completed in accordance to Bartow County Road Department specifications, which shall be provided by the Department at the time the permit is issued.

### **Section III. Utility Permits, Written Notification, and Exempt Activities.**

(a) Permits; Notification. Any work in a Bartow County right-of-way shall either require a utility permit, written notification in advance of the work, or shall be exempt, as specified below. Only the utility itself can obtain a permit, and the contractor(s) intended to do the work must be identified on the permit. Work in a Bartow County right-of-way without a permit, for any type of work for which a permit is required, shall be a violation of this Ordinance. Utility permits provide notice and approval for major projects, new installations, and other similar matters, and should be applied for at least two weeks before the work is scheduled to begin. Written notification provides notice for minor matters and certain repairs. Written notification must be submitted, and acknowledgment of the notice received, prior to any work beginning that requires notification, as specified below. 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 below, require neither a utility permit nor written notification.

(b) Procedures. The 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.

- (c) Utility permits. 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 exempted below.
  3. Any new utility pole installation; replacements are covered by written notification, and emergency replacements are exempt (see emergency repair regulations).

## UTILITY ACCOMMODATION ORDINANCE

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.

(d) Written notification. Written notification must be submitted, and acknowledgment of the notice received back from the 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 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 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 transmittant 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.

## UTILITY ACCOMMODATION ORDINANCE

5. Any digging in the roadbed with a 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 which 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.

(e) Exempt Activities. 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.

## UTILITY ACCOMMODATION ORDINANCE

3. Installation of additional appurtenances or attachments to facilities which **would not**:
  - a. affect vertical or horizontal clearances from the traveled way;
  - b. change the rated capacity or transmittant 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 work day.
5. Utility damage repairs created from construction or routine maintenance performed by the Bartow County Road 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 Road Department.
7. Emergency repairs. See paragraph (f) below for applicable requirements for circumstances requiring post-repair notification.

(f) Emergency Repairs. 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.**

### **Section IV. Provisions for the Protection of the Public.**

(a) Safety Procedures; Securing 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

## UTILITY ACCOMMODATION ORDINANCE

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. Minimum distances of lane closures to protect the safety of the work crews and the general public shall be provided by the Bartow County Road 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 Department. The 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 work day to protect the general public. Cover plates for gaps in the roadway must be secured at the end of each work day. **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.**

(b) Indemnification. The utility receiving the permit and the contractor shall indemnify and hold harmless Bartow County, the Department and all Bartow 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.

(c) 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 bond 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.

(d) Surety Bond. Surety bonds shall be issued only by companies authorized to issue such bonds in Georgia, and shall be in an amount determined by the Road Department based on the size of the project. The minimum bond for a utility permit shall be \$25,000. The bond requirement may be waived by the Department Head's discretion, for utilities that have demonstrated a history of compliance with this Ordinance, financial responsibility, quality work, and prompt responsiveness. The 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

## UTILITY ACCOMMODATION ORDINANCE

factors used in determining whether a project is complex. No work shall be commenced unless the bond is acceptable to the County.

(e) Insurance. All utilities operating in Bartow County right-of-ways shall also provide proof of liability insurance in the amount of \$1,000,000 in general liability 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 coverages. The utility shall present valid proof of self-insurance upon the Department's request. The utility shall also require equivalent insurance from their contractors or subcontractors.

### **Section V. Administration and Enforcement.**

(a) Administration. The Road Department Superintendent shall have the authority to administer the State Department of Transportation's Utility Accommodation Policy and Standards, as amended from time to time by the State or County, on county roads in unincorporated Bartow County and in accordance with any procedures the Bartow County Road Department may establish thereunder.

(b) Fees. The Commissioner of Bartow County 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 Road Department Superintendent and approved by the Commissioner of Bartow County. Any fee schedule shall be posted at the offices of the Road Department and open for public inspection. Fees may be waived for work conducted on behalf of municipal or governmental utilities, only for work being performed by the municipalities' or governments' own employees. For work being performed for a municipality or government by a contractor, normal fees shall be charged.

(c) Responsible Party. Only the utility itself can obtain a permit. The permit shall identify the contractor responsible for the repair and any subcontractors. 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 work is underway.

(d) Inspection. The 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.

(e) Notice of Defect. If a utility installation or road repair is found by the Bartow County Road Department not to be in compliance with the specifications provided, or otherwise not in compliance with this Ordinance or the permit, the Bartow County Road 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

## UTILITY ACCOMMODATION ORDINANCE

longer time is granted by the Department. If the necessary work is not completed within the time limit specified, then the Bartow County Road 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 Department in such circumstances would be authorized to issue citations, stop work orders, or seek other relief. See Section IV below. In the case of emergencies, the 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 Bartow 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.

(f) Violations and Penalties. Violations of this Ordinance, or the Procedures adopted under this Ordinance, shall subject the responsible parties to citation in magistrate court. 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 or other designated attorney for the Department may initiate such actions. Citations 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. Each day a violation exists shall be a separate violation.

1. Responsible Parties. 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.

2. Minimum Fines. 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 - \$500 fine.
- b. Second Violation - \$750 fine.
- c. Third Violation - \$1,000 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.

(g) Stop Work Orders. The 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

UTILITY ACCOMMODATION ORDINANCE

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.

(h) Appeals. Appeals of determinations and interpretations of the Department may be taken to the Commissioner of Bartow County by filing a written notice of appeal within fifteen (15) day of the Department’s decision.

**Section VI. Legal Status Provisions**

(a) Conflict With Other Regulations. 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.

(b) Severability. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(c) Repealer. This Ordinance replaces the prior Utility Accommodation Ordinance, adopted December 4, 2002 and amended thereafter. In the event all of this Ordinance is struck down as void, unconstitutional or invalid, including therefore this provision, that prior ordinance shall be considered to not have been repealed, and shall therefore still be in effect.

(d) Effective Date. This Ordinance shall take effect and be in force from and after its adoption, the public welfare of Bartow County demanding.

**SO ADOPTED**, this 4<sup>th</sup> day of May, 2006.

ATTEST:

BARTOW COUNTY, GEORGIA

\_\_\_\_\_  
Kathy Gill, Clerk

by: \_\_\_\_\_  
Clarence Brown, Commissioner