

FORSYTH COUNTY, GEORGIA
ORDINANCE NO. 134

**AN ORDINANCE BY THE FORSYTH COUNTY BOARD
OF COMMISSIONERS TO ADOPT REGULATIONS FOR
UTILITY ACCOMMODATION WITHIN COUNTY
RIGHTS OF WAY**

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November 1982, and effective July 1, 1983, provides in Article IX, Section 2, Paragraph 1 thereof, that the governing authority of the County may adopt clearly reasonable ordinances, resolutions, and regulations; and

WHEREAS, Forsyth 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 Forsyth 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 the 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, provided that such regulations shall not be more restrictive with respect to utilities affected thereby than are 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 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; and

WHEREAS, appropriate notice and hearing on the ordinance contained herein have been carried out according to general and local law.

NOW, THEREFORE, the Board of Commissioners of Forsyth County, Georgia hereby ordains as follows:

Section 1. The language attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set forth herein, is hereby adopted and approved, and shall be codified as Section 82-146 of Article V in Chapter 82 of the Code of Ordinances.

Section 2. All other ordinances shall continue in full force and effect and shall remain unaffected, except where such ordinance, or part thereof, conflicts herewith, in which case such ordinance, or part thereof, is hereby repealed.

Section 3. It is the express intent of the Board of Commissioners of Forsyth County, Georgia that this Ordinance be consistent with both federal and state law. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 4. This Ordinance shall become effective immediately upon the date of adoption.

BE IT RESOLVED this 15th day of December 2022.

FORSYTH COUNTY BOARD OF COMMISSIONERS

Alfred John
Alfred John, Chairman

Molly Cooper
Molly Cooper, Vice-Chairman

Todd Levent
Todd Levent, Secretary

Cindy Jones Mills
Cindy Jones Mills, Member

Laura Semanson
Laura Semanson, Member

Attest:

Rhonda P. Howard
Clerk to the Board

EXHIBIT “A”

Sec. 82-146 Utility accommodations in rights-of-way.

(a) *Adopted.* The 2016 Utility Accommodation Policy and Standards Manual (sometimes referred to as the “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 Forsyth County Engineering Department, the Forsyth County Capital Projects Department, and the Forsyth County Board of Commissioners’ office and open for public inspection.

(b) *Amendments.* The 2016 Utility Accommodation Policy and Standards Manual promulgated by the Georgia Department of Transportation, adopted in Section 82-146(a), is amended as follows:

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

Attorney General of Georgia/Attorney General: Forsyth County Attorney or his/her designee.

Commissioner: Forsyth County Engineering Department Director; Forsyth County Capital Projects Department Director.

Department: Forsyth County Engineering Department; Forsyth County Capital Projects Department.

Department Office of Financial Management: Forsyth County Engineering Department Director or his/her designee; Forsyth County Capital Projects Department Director or his/her designee.

Design Office Head: Forsyth County Engineering Department Director or his/her designee; Forsyth County Capital Projects Department Director or his/her designee.

District Construction Office: Forsyth County Engineering Department; Forsyth County Capital Projects Department.

District or Area Engineer: Forsyth County Engineering Department; Forsyth County Capital Projects Department.

District Office of Environmental Services: Forsyth County Engineering Department; Forsyth County Capital Projects Department.

District Utilities Office: Forsyth County Engineering Department; Forsyth County Capital Projects Department.

GDOT Project Number: Forsyth County Engineering Department project number; Forsyth County Capital Projects Department project number.

GDOT Utilities webpages: Forsyth County Engineering Department webpage; Forsyth County Capital Projects Department webpage.

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 Forsyth County.

Superior Court: Superior Court of Forsyth County.

State: Forsyth County.

State Bridge and Structural Design Engineer: Forsyth County Engineering Department Director or his/her designee; Forsyth County Capital Projects Department Director or his/her designee.

State highway (chief) engineer: Forsyth County Engineering Department Director or his/her designee; Forsyth County Capital Projects Department Director or his/her designee.

State Highway System: Forsyth County Road System.

State Law Department: Forsyth County Attorney or his/her designee.

State Utilities Engineer: Forsyth County Engineering Department Director or his/her designee; Forsyth County Capital Projects Department Director or his/her designee.

State Utilities Office: Forsyth County Engineering Department; Forsyth County Capital Projects Department.

Statewide or Department's 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 Forsyth County Engineering Department or the director of the Forsyth County Capital Projects Department shall have the authority to administer the 2016 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 Engineering Department or the Capital Projects Department may establish thereunder.

(3) *Fees.* The Forsyth County Board of Commissioners shall be authorized to charge fees in accordance with the 2016 Utility Accommodations Policy and Standards Manual and any other applicable laws that exist now or may be enacted in the future. Fees shall be determined by the director of the Forsyth County Engineering Department or the director of the Forsyth County Capital Projects Department. Any fee schedule shall be posted at the Forsyth County Engineering Department offices of the director or his/her designee or at the Forsyth County Capital Projects Department offices of the director 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 4.0.C and all references in the Manual to Overhead/Subsurface Utility Engineering (SUE) investigations or procedures;
- e. Section 4.1.A;
- f. Section 4.1.B;
- g. Section 4.1.C.1;
- h. Section 4.1.C.3;
- i. Section 4.2.A.2. Case VII;
- j. Section 4.2.A.2. Case VIII;
- k. Section 5.8.A;
- l. Chapter 7.

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

- a. References to the Georgia Utilities Permitting System (GUPS) are amended to refer to the County's utility permit forms and Utility Coordination Manager where the context requires.

- b. *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 Engineering Department or the Capital Projects Department and by conforming to all applicable requirements contained in this Manual.”
- c. *Section 3.5.B Paragraph #3* of the Manual is amended to read as follows: The County Attorney shall represent and defend the Indemnitees. In the event of litigation, any settlement on behalf of the Indemnitees must be expressly approved by the County Attorney. The Utility and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnitees, in which case there will be mutual cooperation between the County Attorney and such counsel.
- d. *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 Engineering Department or the Capital Projects Department.”
- e. *Section 4.0.A.3* of the Manual is amended by deleting the reference to “GUPS Permit Form DOT 8413A” and substituting therefor “Engineering Department permit or Capital Projects Department permit.”
- f. *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 entirety, and amending the remaining portions to read as follows:

“4.1.C.4 Work Plan Approval - It is the responsibility of the Engineering Department director or his/her designee or the Capital Projects Department director or his/her designee to review all Work Plans submitted by the Utility found within a project’s limits. If upon review, the Engineering Department director or his/her designee or the Capital Projects Department 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 Engineering Department director or his/her designee or the Capital Projects Department director or his/her designee will initiate the following process to resolve such disputes involving the Work Plan whenever they may occur.

After the Engineering Department director or his/her designee or the Capital Projects Department director or his/her designee has reviewed and determined that the submitted Work Plan is unreasonable for the proposed utility work in question, the Engineering Department director or his/her designee or the Capital Projects Department 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 Engineering Department director or his/her designee or the Capital Projects Department 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 Engineering Department's original written correspondence, or the Capital Improvements Department's original written correspondence, the said dispute may be escalated by the Engineering Department director or his/her designee, or by the Capital Projects Department director or his/her designee, or by the Utility to the Engineering Department director or the Capital Projects Department director, 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."

- g. *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 Engineering Department or Capital Projects Department, along with such supporting documentation for such claim as may be required at the discretion of the Engineering Department or Capital Projects Department, which information shall include, but shall not be limited to, the specific facilities for which the claim is made and the date and circumstances under which each facility was installed. The Engineering Department or Capital Projects Department reserves the right to require such additional supporting documentation where the initial documentation submitted does not provide sufficient information to permit a determination to be made. Upon review and verification of the information provided by the Utility, the Engineering Department or Capital Projects Department shall make a determination of eligibility for reimbursement."

- h. *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 Engineering Department or Capital Projects Department 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)."

- i. *Section 4.2.C.5.b* of the Manual is amended to read as follows:

“Where existing utility facilities were installed under authority of prior utility right of way or easement rights, and such facilities are relocated or adjusted into the limits of the right of way being acquired by the County, then an agreement between the County and Utility shall be executed to outline the Utility’s right to reimbursement for utility right of way or easement costs in the event the utility facilities, as relocated or adjusted into County right of way, must be later relocated or adjusted outside County right of way. Operation and maintenance of any utility facilities adjusted or relocated into County right of way will be subject to this Manual in the same manner as new utility facilities installed within County right of way.”

- j. *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 Engineering Department or the Capital Projects Department will prepare the agreement and coordinate approval and execution. All agreements shall be in writing and executed by the County and the Utility.”

- k. *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 Forsyth County Code of Ordinances. The prior concurrence of the Director of the Forsyth County Engineering Department or the Director of the Forsyth County Capital Projects Department and the County Attorney may also be required.”

- l. *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 Engineering Department, the Capital Projects Department, the Utility, or the Engineering Department’s or Capital Projects 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 Engineering Department’s or the Capital Projects 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 Engineering Department or Capital Projects 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 Engineering Department director or his/her designee or the Capital Projects Department 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 Engineering Department or Capital Projects Department 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 Forsyth County Engineering Department or the Forsyth County Capital Projects Department will initiate the same process to resolve such disputes as set forth in Section 4.1.C.4.”

m. *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 Forsyth County Engineering Department or the Forsyth County Capital Projects Department, then the Utility may be liable to the County or its Contractor for delay costs and damages incurred by the County 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 Forsyth County Engineering Department or the Forsyth County Capital Projects 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 Engineering Department director or his/her designee or the Capital Projects Department 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 Forsyth County Engineering Department or Forsyth County Capital Projects 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 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 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 Contractor and the Forsyth County Engineering Department or Forsyth County Capital Projects Department 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 Forsyth County Engineering Department director or his/her designee or the Capital Projects Department director or his/her designee has reviewed and determined that the submitted Work Plan is unreasonable for the proposed utility work in question, the Forsyth County Engineering Department director or his/her designee or the Capital Projects Department 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 Forsyth County Engineering Department or the Forsyth County Capital Projects Department. If the Work Plan dispute cannot be resolved through the efforts described above after 20 business days from the date provided in the Forsyth County Engineering Department's or the Forsyth County Capital Projects Department's original written correspondence, said dispute may be escalated by the Forsyth County Engineering Department director or his/her designee or the Capital Projects Department director or his/her designee or the Utility to the Engineering Department Director or the Capital Projects Director, 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 Forsyth County Engineering Department's or the Forsyth County Capital Project Department'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."

- n. *Section 5.2.F.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 Forsyth County Engineering Department or Forsyth County Capital Projects Department.