

CHAPTER 53  
CARE & PROTECTION OF HIGHWAYS

- § 53101. Definitions.
- § 53102. Permits: Petty Misdemeanor.
- § 53103. Permit Terms.
- § 53104. Cost of Work Supervision.
- § 53105. Bond May Be Required.
- § 53106. Notice Demanding Removal.
- § 53107. Summary Removal.
- § 53108. Removal by Department.
- § 53109. Relocation of Permitted Encroachments for Federally Funded Highway/Road Projects.
- § 53110. Fines Collected from Public Rights-of-Way Violations.

**§ 53101. Definitions.**

As used in this Chapter

- (a) Department means the Department of Public Works.
- (b) Director means the Director of Public Works.
- (c) *Roadway, highway, road, or street* (hereinafter “roadway”) means all or any part of the entire width of right of way, whether or not such entire area is actually used by the general public for the passage of vehicles and persons.
- (d) Encroachment means any tower, pole, poleline, pipe, pipeline, fence, billboard, stand or building, or any structure or utility infrastructure not particularly mentioned, which is placed in, under or over any portion of a highway.
- (e) Betterment means any upgrade to permitted encroachments or permitted temporary encroachments that is not attributable to a highway construction project, or is made solely for the benefit of and at the election of the utility. Betterment includes, but is not limited to, relocation of aerial facilities underground.
- (f) Permitted encroachment means the assets or infrastructure of a utility permitted by the Department of Public Works to use public right-of-way. This definition does not apply to sign permits.

**5 GCA GOVERNMENT OPERATIONS  
CH. 53 CARE & PROTECTION OF HIGHWAYS**

Permittees, for purposes of this Chapter, are the owners or lessors of a permitted encroachment.

(g) Permitted temporary encroachment means any sign, advertisement or other temporary structure that is permitted by the Department of Public Works to be posted on government of Guam rights-of-way. Temporary Permittees, for purposes of this Chapter, are the owners or lessors of a permitted temporary encroachment.

(h) Utility means the Guam Power Authority, the Guam Waterworks Authority or their legal successors, and public or legally licensed purveyors of telecommunication services.

**SOURCE:** GC § 10250 added by P.L. 10-40. Amended by P.L. 31-085:4 (Sept. 30, 2011). Subsection (c) amended by P.L. 32-091:1 (Nov. 27, 2013).

**§ 53102. Permits: Petty Misdemeanor.**

(a) The Department may issue written permits, as provided in this Chapter, authorizing the permittee to do any of the following acts:

(1) Making an opening or excavation for any purpose in a highway.

(2) Place, change or renew an encroachment.

(3) Place or display in, under, or over any highway, any kind of advertising sign or device. Any such sign or device placed or displayed contrary to the provisions of this Section is a public nuisance, and the Department may immediately remove it.

(4) Plant, remove, cut, cut down, injure, or destroy any tree, shrub, plant, or flower growing within any highway.

(5) Place in, under or over any highway, and perform routine maintenance and emergency repairs on utility equipment and facilities.

(b) Any person who does any of the acts specified in this Section, without the authority of a valid permit, is guilty of a petty misdemeanor.

**SOURCE:** GC § 10251 added by P.L. 10-40. Amended by P.L. 13-187:96. Subsection (a)(5) added by P.L. 31-085:5 (Sept. 30, 2011).

**§ 53103. Permit Terms.**

**5 GCA GOVERNMENT OPERATIONS**  
**CH. 53 CARE & PROTECTION OF HIGHWAYS**

Any permit issued under the provisions of this Chapter shall provide that the permittee will pay the entire expense of restoring the highway to the department standard for repairs made to a permitted encroachment, and may provide such other conditions as to the location and the manner in which the work is to be done as the Department finds reasonably necessary for the protection of the highways. All permits shall provide that they are revocable, for cause, upon thirty (30) days' written notice by the Department. Cause for revocation is the presence of any asset of any permittee that is adversely affecting the use, repair, improvement or access to the highway or as specified in § 53107 (b)(c)(d) of this Chapter.

All costs of betterments shall be paid by the owner of such infrastructure.

The Department shall coordinate with all affected utilities when planning highway construction, and shall include the costs of any utility relocations when requesting federal funds in connection with such construction.

**SOURCE:** GC § 10252 added by P.L. 10-40. Amended by P.L. 31-085:6 (Sept. 30, 2011).

**§ 53104. Cost of Work Supervision.**

The Department may, but is not required to, supervise any work done under any permit issued under the provisions of this Chapter, in which event, the permittee shall pay the reasonable cost of such supervision to the Department, except to the extent that there are federal funds available or accessible for such purposes.

**SOURCE:** GC § 10253 added by P.L. 10-40. Amended by P.L. 31-085:7 (Sept. 30, 2011).

**§ 53105. Condition for Deposit Fees and/or Bond.**

(a) All applications for excavation of a roadway shall have a schedule of work that sets the timeline of construction or work events, and deadline when the roadway will be restored to its original condition or better. The contractor or public agency shall be required to close the opening and restore the roadway no later than the date as specified on the permit, or by the DPW Director.

(b) Deposit Fee.

**5 GCA GOVERNMENT OPERATIONS**  
**CH. 53 CARE & PROTECTION OF HIGHWAYS**

(1) In addition to the permit application fee, and except as provided herein, any project by a private contractor or public agency which would require an opening or excavation for any purpose in a roadway shall be required to provide a deposit fee of no less than Five Hundred Dollars (\$500) or no less than five percent (5%) of the total cost of the project impacting the roadway, whichever is greater.

(2) No permit shall be granted to a contractor or public agency unless the deposit fee is paid in full or a performance bond, provided by a surety company authorized to do business on Guam, guarantees repairs on a single project or multiple projects anticipated to be undertaken over a period of time is provided.

(3) The prerequisite for a deposit fee shall not be applicable to government-funded projects that necessitate bond insurance coverage as a stipulation of the project; or for other projects for which there is a performance bond, upon such terms and in such amount as may be required by the Department at its discretion. This requirement for a deposit fee shall not preclude the Department's condition for a bond, as may be imposed herein.

(4) Inspection and Repair.

(A) The deposit fee shall be retained by the Department for up to three (3) months from the completion of the roadway repair, during which time the Department shall conduct a site inspection of the roadway project area in which the opening or excavation had occurred to ascertain if the repairs were conducted and completed properly in accordance with applicable Federal Highway Administration and Department of Public Works standards.

(B) If the roadway area is identified to be insufficiently repaired, then the Director shall assess a penalty against the deposit fee or performance bond, exclusive of the requirement for the contractor or public agency to return and ensure that proper repair is conducted. On unpaved roadways, "insufficient repair" shall not include degradation, including, but not limited to, erosion, weathering, and the impacts of traffic, which would otherwise have been expected in the absence of the excavation in question.

**5 GCA GOVERNMENT OPERATIONS**  
**CH. 53 CARE & PROTECTION OF HIGHWAYS**

(C) If the contractor or public agency fails to make proper repairs within fourteen (14) days of notification of the Department's findings, the Department is authorized to procure road repair services in accordance with 5 GCA Chapter 5, § 5213, and 2 GAR Div. 4, § 3111. The Department shall retain as much of the performance bond or deposit fee as may be required to compensate the Department for damages arising from permittee's failure to complete satisfactory road repair; and the Department may also bring an action in the Superior Court of Guam against the contractor for direct damages, if any, beyond the amount of the performance bond or deposit fee posted.

(D) Should the area repaired meet the Department's standards set forth for the repair of the roadway, the Department shall return the deposit fee in full; however, the permit application fee shall not be returned. The party responsible for the roadway repair shall provide a one (1) year warranty on the work that was completed. For unpaved roadways, the warranty requirement shall be for a period of ninety (90) days.

(5) In lieu of multiple deposit fees by a public agency or contractor to guarantee repair of excavations needed for recurring maintenance, repairs, and upgrades of its buried facilities, the Department may authorize the posting of a performance bond to cover multiple excavations in such amount and under such term as the Department deems sufficient to ensure compliance with this Chapter. In the event of forfeiture of the deposit fee or performance bond, the proceeds shall be deposited in the Public Rights-Of-Way Account of the Territorial Highway Fund for the purpose of paying for roadway repairs.

(c) All proceeds from the deposit fee established by this Section shall be deposited in the Public Rights-Of-Way Account of the Territorial Highway Fund, and interest derived therefrom shall remain in the Fund. Sufficient funds shall be reserved for the refund of deposits, pursuant to this Section.

(d) Emergency Excavations. An emergency excavation may be made without prior permit or deposit if the reason for the excavation is to

**5 GCA GOVERNMENT OPERATIONS**  
**CH. 53 CARE & PROTECTION OF HIGHWAYS**

prevent loss of life or damage to property that appears to be imminent if the excavation is delayed, or to perform critical unscheduled repairs to remedy unanticipated interruptions to services. In such emergency situations, the contractor or public agency responsible shall contact the Department on the first working day following the commencement of excavation to complete and secure a formal permit. The contractor or public agency responsible shall provide justification for the emergency excavation. In the event the Department deems that the excavation was not an emergency, the applicant shall be penalized Five Hundred Dollars (\$500) for failure to properly secure a permit prior to excavating, and will still be required to pay the appropriate fees and deposits. Except for the prior permit requirement, none of the application fee, deposit, bond, or penalty provisions of this Section shall be waived for emergency situations.

(e) Before granting a permit under any provision of this Chapter, the Department may require the applicant to file with the Department a satisfactory bond, payable to the government of Guam in such amount and term as the Department deems sufficient, conditioned on the proper compliance by the permittee with the provisions of this Chapter. In the event of forfeiture of the bond, the proceeds shall go to the Public Rights-Of-Way Account of the Territorial Highway Fund.

(f) Prior to the start of excavation work, the permittee shall duly inform the Mayor of the district where the excavation is to be made, and notify the Mayor upon completion of the roadway restoration. In the event of emergency excavations, as provided for in Subsection (d), the permittee shall notify the Mayor on the next working day.

**SOURCE:** GC § 10254 added by P.L. 10-40. Amended by P.L. 25:34:5, P.L. 31-083:2 (Sept. 30, 2011), effective thirty (30) days from date of enactment pursuant to P.L. 31-083:3. Amended by P.L. 32-091:2 (Nov. 27, 2013).

**2013 NOTE:** Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

**§ 53106. Notice Demanding Removal.**

Except as otherwise provided in § 53108 of this Chapter, notice shall be given to the owner, occupant, or person in possession of the encroachment, or to any other person causing or suffering the encroachment to exist, by serving upon any such person a notice containing a demand for the immediate removal of such encroachment from within

**5 GCA GOVERNMENT OPERATIONS  
CH. 53 CARE & PROTECTION OF HIGHWAYS**

such highway. Any such notice shall describe the encroachment complained of with reasonable certainty as to its character and location.

**SOURCE:** GC § 10255 added by P.L. 10-40.

**§ 53107. Summary Removal.**

The Department may immediately remove from any highway any encroachment which:

- (a) Is not removed prior to the expiration of five days from and after the service of notice.
- (b) Obstructs or prevents the use of the highway by the public.
- (c) Consists of refuse.
- (d) Is an advertising sign of any description.

**SOURCE:** GC § 10256 added by P.L. 10-40.

**§ 53108. Removal by the Department.**

The Department may remove any encroachment on the failure of the owner to comply with the notice provided for in this Chapter. The owner shall be liable for all expenses of such removal and in addition thereto, the sum of Fifty Dollars (\$50.00) for each day such encroachment remains after the expiration of five (5) days from the service of the notice. The fines collected shall be deposited in the Public Rights-Of-Way Account of the Territorial Highway Fund.

**SOURCE:** GC § 10258 added by P.L. 10-40. Amended by P.L. 32-028:1 (May 10, 2013).

**§ 53109. Relocation of Permitted Encroachments for Federally Funded Highway/Road Projects.**

Notwithstanding any other provision of law, the cost to relocate any permitted encroachments as defined in this Chapter shall be paid for by federal funds when authorized by the grantor of federal funds pursuant to 5 GCA § 54107, except to the extent the utility is making the request to move their infrastructure, in which case the utility shall bear the cost of relocation unless federal funding is available for such purposes. All costs to relocate a temporary permitted encroachment shall be paid by the owner of such temporary permitted encroachment.

**SOURCE:** Added by P.L. 31-085:8 (Sept. 30, 2011).

**5 GCA GOVERNMENT OPERATIONS  
CH. 53 CARE & PROTECTION OF HIGHWAYS**

**§ 53110. Fines Collected from Public Rights-of-Way Violations.**

All fines generated by this Chapter shall be deposited in a special account known as the Public Rights-Of-Way Account of the Territorial Highway Fund, and any interest derived shall remain in the Fund. The Director of the Department of Public Works is authorized to use revenues in the Account to purchase equipment and supplies, pay for roadway repairs, and to procure the services of licensed surveyors, as required by the Department to effectively enforce the public's compliance with applicable highway care and maintenance laws.

**SOURCE:** Added by P.L. 32-028:2 (May 10, 2013). Amended by P.L. 32-091:3 (Nov. 27, 2013).

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