

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

**CHAPTER 53**  
**CARE & PROTECTION OF HIGHWAYS**

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**§ 53101. Definitions.**

As used in this Chapter

(a) *Department* means the Department of Public Works.

(b) *Director* means the Director of Public Works.

(c) *Highway* means all or any part of the entire width of right of way, whether or not such entire area is actually used for highway purposes.

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

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(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).

**§ 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.**

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,

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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.**

All applications for excavation of a roadway *shall* have a schedule of work that sets the timeline and maximum time before the road is restored to original condition or better. The contractor *shall* be required to close the opening and restore the roadway upon expiration of time as specified by the permit or the DPW Chief Engineer.

In addition to the permit application fee, any project by a public or private contractor or public agency which would require an opening or excavation for any purpose in a highway or public 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. *No* permit shall be granted

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to a contractor or public agency *unless* the deposit fee is paid in full. 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. This requirement for a deposit fee *shall not* preclude the Department's condition for a bond, as may be imposed herein.

The deposit fee highlighted herein *shall* be retained by the Department for one (1) year from the completion of the road repair, and until such time that the Department conducts a site inspection of the road or highway project area in which the opening or excavation had occurred, and can ascertain that the repairs were conducted and completed properly in accordance with applicable Federal Highway Administration and/or Department of Public Works standards. *If* the road or highway area is identified to be insufficiently repaired, then the deposit fee *shall* be assessed as a penalty, exclusive of the requirement for the contractor or public agency to return and ensure that proper repair is conducted. Should the area repaired meet the Department's standards set forth for the repair of the road or highway, the Department *shall* return the deposit fee in full, *however*, the permit application fee *shall not* be returned. Inspection of the road or highway project area *shall* be performed by DPW within the one (1) year period following completion of the road repair.

All proceeds from the deposit fee established by this Section *shall* be deposited into 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.

Emergency Excavations. An emergency excavation may be made without prior permit or deposit if the reason for the excavation is to prevent loss of life or damage to property that appears to be imminent if the excavation is delayed. In such emergency situations the contractor or public agency responsible *shall* contact the Department on the first working day following the excavation and 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

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application fee, deposit, bond, or penalty provisions of this Section shall be waived for emergency situations.

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 affected agency.

**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.

**§ 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 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 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

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shall be liable for all expenses of such removal and in addition thereto, the sum of Ten Dollars for each day such encroachment remains after the expiration of five days from the service of the notice.

**SOURCE:** GC § 10258 added by P.L. 10-40.

**§ 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).

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