



Napa County

Board Agenda Letter

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Board of Supervisors

Agenda Date: 7/13/2021

File ID #: 21-605

TO: Board of Supervisors

FROM: Jeffrey M. Brax, County Counsel

REPORT BY: Thomas Zeleny, Chief Deputy County Counsel

SUBJECT: Second reading and adoption of an ordinance amending Chapter 12.04 regarding encroachments and adding Chapter 12.05 regarding small wireless facilities in the public right-of-way

RECOMMENDATION

County Counsel requests the second reading and adoption of an ordinance amending Article I of Chapter 12.04 of the Napa County Code regarding encroachments and adding new Chapter 12.05 regarding small wireless facilities in the right-of-way.

ENVIRONMENTAL DETERMINATION: The adoption of the various provisions of this ordinance is either categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, as an activity affecting the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures or facilities involving negligible or no expansion of existing or former use; or categorically exempt from CEQA pursuant to CEQA Guidelines Section 15303, as an activity affecting the construction and location of limited numbers of new, small facilities or structures, or installation of small new equipment in such structures; or not subject to the provisions of CEQA pursuant to CEQA Guidelines Section 15060(c)(2), as an activity which will not result in a direct or reasonably foreseeable indirect physical change in the environment.

EXECUTIVE SUMMARY

On June 22, 2021, the Board of Supervisors conducted a first reading of an ordinance amending Chapter 12.04 (Encroachments) of the Napa County Code, and adding new Chapter 12.05 (Small Wireless Facilities). The amendments to Chapter 12.04 clarify the types of encroachment permits that are ministerial, and those that are discretionary, to reflect current practice. The amendments to Chapter 12.04 also ensure the county roads commissioner has the authority to require encroachments be maintained in good condition, to order the removal of unauthorized or dangerous encroachments, and to insulate the County from liability for any injuries to the public caused by encroachments.

New Chapter 12.05 (Small Wireless Facilities) affirms that applications for small wireless facilities along county highways are processed as encroachments under Chapter 12.04, not as telecommunications facilities on private property under Chapter 18.119 of the zoning provisions of the County Code. If adopted, Chapter 12.05 will also require certain information be included with applications for encroachment permits for small wireless facilities, impose certain aesthetic requirements, require small wireless facilities be regularly inspected and removed if inoperable, and that insurance be provided naming the County as an additional insured.

At the conclusion of public comment, the Board passed a motion of intent to adopt the proposed ordinance. This consent calendar item requests that the Board conduct its second reading and take final action adopting the ordinance.

FISCAL & STRATEGIC PLAN IMPACT

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| Is there a Fiscal Impact? | No |
| Is it currently budgeted? | No |
| Where is it budgeted? | N/A |
| Is it Mandatory or Discretionary? | Discretionary |
| Discretionary Justification: | The proposed ordinance will clarify which types of encroachments are subject to ministerial or discretionary approval, and that applications for small wireless facilities in the right-of-way are processed as encroachments. |
| Is the general fund affected? | No |
| Future fiscal impact: | Application fees are anticipated to cover cost of reviewing and issuing encroachment permits. |
| Consequences if not approved: | Encroachment permit applications will continue to be processed as usual, but without the clarity this ordinance offers. |
| County Strategic Plan pillar addressed: | Health, safe, and welcoming place to live, work and visit. |
| Additional Information: | None. |

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The adoption of the various provisions of this ordinance is either categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, as an activity affecting the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures or facilities involving negligible or no expansion of existing or former use; or categorically exempt from CEQA pursuant to CEQA Guidelines Section 15303, as an activity affecting the construction and location of limited numbers of new, small facilities or structures, or installation of small new equipment in such structures; or not subject to the provisions of CEQA pursuant to CEQA Guidelines Section 15060(c)(2), as an activity which will not result in a direct or reasonably foreseeable indirect physical change in the environment.

BACKGROUND AND DISCUSSION

California Streets and Highways Code section 1460 authorizes county road commissioners to issue permits for the placement of encroachments over, under, and along county highways. Encroachment permit requirements are found in Article I (Permit Requirements) of Chapter 12.04 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Napa County Code. The permit requirements have remained relatively unchanged since at least 1973, when the Napa County Code was adopted by the Board of Supervisors pursuant to Ordinance No. 436.

The ordinance reflects the County's existing practice for processing applications for encroachment permits, and would provide more clarity for members of the public who may apply for permits. Amending Chapter 12.04 would clarify the types of encroachment permits that are ministerial, and those that are considered discretionary. The following types of encroachment permits are considered ministerial, and shall be issued if they meet pre-established County standards:

- Paved driveways providing access to adjacent property
- Mailboxes or other small encroachments
- Utility poles, distribution lines or pipelines, meters, service laterals and other utility equipment

- Bus stops
- Real estate signs, government agency signs, bus stop bench signs
- Small wireless facilities installed on existing structures
- Replacement of existing small wireless facilities and support structures
- Fire hydrants
- Temporary obstructions such as debris boxes or portable moving containers
- Temporary obstructions necessary to construct or maintain adjacent improvements
- Encroachments previously approved by the Board of Supervisors or the planning commission

All other encroachment permits are considered discretionary and may be approved, denied, or approved with conditions by the county roads commissioner. Applications for discretionary encroachment permits may be appealed to the Board of Supervisors; ministerial encroachment permits may not. The proposed amendment also authorizes the County Roads Commissioner to record an agreement with the adjacent property owner to memorialize any long-term conditions of the encroachment, such as maintenance, relocation, removal, insurance or indemnity. The County Roads Commissioner will also be authorized to remove any abandoned or dangerous encroachments at the owner's expense.

The ordinance adds new Chapter 12.05 (Small Wireless Facilities) to Title 12 (Streets, Sidewalks and Public Places) of the Napa County Code. The ordinance proposes to affirm that applications for small wireless facilities along county highways are processed as encroachments under Chapter 12.04, not as telecommunications facilities on private property under Chapter 18.119 of the zoning provisions of the Napa County Code. If adopted, Chapter 12.05 will also require certain information be included with applications for encroachment permits for small wireless facilities, impose certain aesthetic requirements, require small wireless facilities be regularly inspected and removed if inoperable, and that insurance be provided naming the County as an additional insured. Owners of small wireless facilities in the right-of-way will be required to demonstrate that their facilities comply with state and federal requirements, including federal standards for radio frequency emissions, when an application is submitted and again in the future if requested by the county roads commissioner.

Federal law prohibits local government from regulating the placement of small wireless facilities "on the basis of the environmental effects of radio frequency emissions to the extent such facilities comply with the Commission's regulations concerning such emissions." (47 U.S.C. § 332(c)(7)(B)(iv).) While the proposed ordinance requires applications to include information about a small wireless facility's field strength or power, service area, and alternative locations (if near residences, schools, daycares, or historic structures), the ordinance does not authorize the county roads commissioner to regulate the placement small wireless facilities in a manner that would contravene federal law. Such information is required only to confirm that the proposed facility complies with state and federal requirements and, in the case of discretionary permits, whether there are suitable alternative locations that would better preserve neighborhood aesthetics and reduce noise that may be associated with the testing and operation of backup power systems.

On June 22, 2021, the Board conducted a first reading and passed a motion of intent to adopt the proposed ordinance. This consent calendar item requests that the Board conduct its second reading and take final action adopting the ordinance.

SUPPORTING DOCUMENTS

Ordinance