

ORDINANCE NO. _____

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, 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**

WHEREAS, 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; and

WHEREAS, to properly manage county highways, the Napa County Roads Commissioner needs the authority to (i) require encroachments be maintained in good condition, (ii) order the removal of unauthorized or dangerous encroachments, (iii) order the relocation of encroachments that interfere with public works projects, and (iv) ensure the County is insulated from liability for any injuries to the public caused by encroachments; and

WHEREAS, the Board of Supervisors desires to clarify the types of encroachment permits that are considered ministerial, and those that are considered discretionary; and

WHEREAS, the Federal Telecommunications Act and related federal regulations require the County to process applications for small wireless facilities within relatively short timeframes, sometimes referred to as “shot clocks”; and

WHEREAS, the Board of Supervisors desires 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 Code; and

WHEREAS, the Board of Supervisors desires to preserve the aesthetics of County highways and neighborhoods, minimize any noise impacts on residents that may be associated

with small wireless facilities, and ensure that small wireless facilities are operated and maintained in compliance with federal and state requirements;

NOW, THEREFORE, the Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. Article I (Permit Requirements) of Chapter 12.04 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Napa County Code is amended to read in full as follows:

12.04.010 – Right-of-way defined.

“Right-of-way” means any improved or unimproved highway, road, street, lane or alley which has been accepted as and declared to be part of the county road system; provided, however, that the provisions of this chapter shall not apply to highways forming a part of the state highway system.

12.04.020 – Unlawful activity.

- A. It is unlawful for any person, firm, corporation or other body or association of persons, including municipal corporations, sanitation districts, sanitary districts, cities and towns to leave, make or cause to be made any excavation or obstruction, or to perform work of any nature within, upon or under the limits of the right-of-way in the unincorporated territory of the county without a valid encroachment permit.
- B. It is unlawful for any person, firm, corporation or other body or association of persons, including municipal corporations, sanitation districts, sanitary districts, cities and towns to knowingly violate a term or condition of an encroachment permit.

12.04.030 – Exemptions to chapter.

The provisions of this chapter shall not apply to any officer or employee of the county in the discharge of the officer's or employee's official duties, or to any public works project performed under contract with the county.

12.04.040 – Administration by County Roads Commissioner.

Notwithstanding the road setbacks in Chapter 18.112, the county roads commissioner may issue permits for encroachments in the right-of-way in accordance with this Chapter. The county roads commissioner may delegate duties performed under this Chapter to other County employees.

12.04.050 – Applications.

Applications for encroachment permits shall identify the owner of the proposed encroachment, the nature of the encroachment and its proposed location, be submitted on forms as may be prepared by the county roads commissioner, and include any information the county roads commissioner determines is necessary to evaluate the encroachment's potential impact on current and future uses of the right-of-way.

12.04.060 – Administrative approval.

The county roads commissioner shall issue permits for the following types of encroachments through an administrative and ministerial process. The county roads commissioner may adopt, amend, or rescind standards for the administrative approval of these types of encroachments. The standards shall reference or detail only fixed standards and objective measurements that do not require the exercise of discretion by the county roads commissioner.

- A. Paved driveways or hardscape improvements to the extent necessary to provide vehicular or pedestrian access to properties adjacent to the right-of-way.
- B. Mailboxes or other small encroachments, other than signs, that are a safe distance from the outer edge of the nearest lane of travel as determined by the county roads commissioner.
- C. Utility poles, distribution lines or pipelines, meters, pull boxes, or service laterals to convey electricity, natural gas, water, wastewater, or signals for telephone, television, or internet service, that are owned or operated by a public entity, a utility operating under a local or state franchise, or a utility regulated by, or registered with, the California Public Utilities Commission. This does not include electric or natural gas transmission lines or pipelines permitted under section 18.120.010(B) of this Code, or other regional facilities that bring services into Napa County from neighboring jurisdictions, or pass through Napa County to other jurisdictions.
- D. Public transit bus stops.
- E. Signs described in sections 18.116.020(B), and 18.116.120(A) and (B), that otherwise comply with this Code.
- F. Small wireless facilities that comply with Chapter 12.05 of this Code and are installed on existing structures in the right-of-way.
- G. Eligible facilities requests that comply with Chapter 12.05 of this Code and do not substantially change the physical dimensions of the existing wireless towers or base stations, pursuant to Title 47, section 1455(a)(1) of the United States Code (47 U.S.C. § 1455(a)(1)).

- H. Fire hydrants.
- I. Temporary obstructions such as debris boxes or portable moving containers.
- J. Temporary obstructions necessary to construct, repair, or maintain improvements in or adjacent to the right-of-way, provided that adequate traffic control is maintained throughout the duration of the obstructions.
- K. Any encroachments approved by the board of supervisors or the planning commission.

12.04.070 – Discretionary approval.

- A. The county roads commissioner may approve applications for encroachments other than those set forth in section 12.04.060 after considering the following factors and any other factors deemed relevant by the county roads commissioner:
 1. The legal right or necessity to encroach in the right-of-way;
 2. The public benefit or interest in the encroachment;
 3. Aesthetics, including impacts to viewsheds under Chapter 18.106;
 4. Public safety; and
 5. Environmental impacts.
- B. The county roads commissioner may approve, deny, or impose conditions on the approval of an application for an encroachment permit under this section.

12.04.080 – Encroachment permit conditions.

Owners of encroachments in the right-of-way who are issued a permit under this Chapter shall comply with all the following conditions, in addition to any other conditions imposed by the county roads commissioner. As a condition of issuing a permit, the county roads commissioner may require the owner of an encroachment to execute an agreement to comply with these and any other conditions, and record the agreement with the recorder division of the assessor-recorder-county clerk department where the owner of the encroachment is also the owner of the adjacent property.

- A. The owner shall replace, repair or restore the right-of-way promptly upon completion of construction or maintenance activities, to the same condition existing prior to such work. If the right-of-way is not promptly restored, the county roads commissioner may do whatever work is necessary to restore the right-of-way to its former condition at the expense of the owner of the encroachment.

- B. The owner shall maintain the encroachment in a good, safe and operable condition.
- C. The owner shall remove or relocate the encroachment, at the owner's expense, as necessary for the construction, operation, or maintenance of the right-of-way or any utility service therein, or for any other governmental purpose. The owner shall remove or relocate the encroachment within thirty days after notice unless a longer period is specified by the county roads commissioner. If the owner fails to timely remove or relocate the encroachment, the county roads commissioner may do so at the owner's expense.
- D. The owner shall defend, indemnify, protect and hold the county, its officers and employees, harmless from and against all claims or liability for damages or injuries to any person or property which arise from, or are caused or claimed to be caused by the construction, operation, maintenance, or existence of the encroachment in the right-of-way, except for any claims or liability arising from the active or sole negligence, or willful misconduct of the county.

12.04.090 – Permit fees and bonds.

Applications for encroachment permits shall include payment of fees established by resolution of the board of supervisors. The county roads commissioner may also require applicants to post a bond to ensure compliance with encroachment permit conditions.

12.04.100 – Traffic control.

Owners of encroachments shall provide, erect and maintain such lights, barriers, warning signs and other means necessary to protect the traveling public during construction and maintenance activities. The county roads commissioner's specification or approval of traffic control or safety plans shall not excuse the owners of the encroachments from complying with all legal requirements and properly protecting the safety of those using the right-of-way.

12.04.110 - Building permits.

Nothing in this Chapter shall relieve an owner of an encroachment from the obligation to obtain a building permit as may otherwise be required by this Code.

12.04.120 - Duration of encroachment permits.

- A. An encroachment permit issued under this chapter may include a date by which construction must commence or be completed, and may also include an expiration date by which the encroachment must be removed by the owner. An encroachment may remain in the right-of-way after the expiration of the permit if the owner has executed an agreement for maintenance and removal of the encroachment pursuant to section 12.04.080.

- B. The county roads commissioner may revoke an encroachment permit if:
 - 1. The owner fails to comply with this Chapter or any obligation or condition in the encroachment permit;
 - 2. The county roads commissioner determines the encroachment is a threat to the health or safety of the public; or
 - 3. After any work is commenced in the right-of-way, the owner fails to diligently prosecute and complete the work in a timely manner.
- C. Upon the expiration or revocation of an encroachment permit, the owner shall promptly remove the encroachment and restore the right-of-way to its original condition. If the owner fails to timely remove the encroachment, the county roads commissioner may do so at the owner's expense.

12.04.125 – Appeals.

- A. A decision to approve, deny, or impose conditions on the approval of an application for an encroachment permit under section 12.04.070, or to revoke an encroachment permit under section 12.04.120, may be appealed to the board of supervisors pursuant to Chapter 2.88.
- B. A decision to approve or deny an application for an encroachment permit under section 12.04.060 represents the final decision of the County and is not subject to administrative appeal.

12.04.130 - Emergency work.

No provision of this Chapter shall be construed as preventing the emergency repair of any encroachment lawfully on or under any right-of-way where immediate action is necessary to protect the health or safety of the public or to restore utility services, provided that the owner of the encroachment notifies the county roads commissioner of the emergency work as soon as reasonably possible, and restores the right-of-way to its original condition upon completion of the emergency work.

SECTION 2. A new Chapter 12.05 (Small Wireless Facilities) is hereby added to Title 12 (Streets, Sidewalks and Public Places) of the Napa County Code to read in full as follows:

Chapter 12.05

SMALL WIRELESS FACILITIES

12.05.010 – Purpose.

The purpose of this ordinance is to regulate small wireless facilities in the right-of-way consistent with the Federal Telecommunications Act, related federal regulations, and state law.

12.05.020 – Scope.

This Chapter governs small wireless facilities located within the right-of-way, while Chapter 18.119 of this Code governs wireless facilities located outside of the right-of-way. This Chapter does not apply to amateur (HAM) radio communication facilities or wireless facilities within the incorporated areas of Napa County.

12.05.030 – Definitions.

“Eligible facilities request” shall have the same meaning as set forth in Title 47, section 1455(a)(2) of the United States Code (47 U.S.C. § 1455(a)(2)).

“Small wireless facilities” shall have the same meaning as set forth in Title 47, Part 1, section 1.6002(l) of the Code of Federal Regulations (47 C.F.R. § 1.6002(l)).

12.05.040 – Applications.

- A. Applications for small wireless facilities located in the right-of-way shall be processed as encroachments under Chapter 12.04 of this Code.
- B. Applications for eligible facilities requests for facilities located in the right-of-way shall be processed as encroachments under Chapter 12.04 of this Code.
- C. Applications shall include the following additional documentation:
 - 1. Documents demonstrating that the small wireless facility, alone and in combination with other nearby wireless facilities, complies with federal standards for radio frequency emissions in accordance with federal law and any other requirements imposed by state or federal regulatory agencies.
 - 2. Documents identifying the location, type, capacity, field strength or power density, and calculated geographic service area of the small wireless facility.
 - 3. If the application involves construction of a new tower or pole, documents demonstrating why collocation on an existing structure is not feasible.
 - 4. If the proposed location is within 1,000 feet of a residential building, school, daycare center, or historical structure as defined in section 16.04.305 of this Code, documents demonstrating that the applicant considered locations beyond 1,000 feet of such buildings and why the applicant found them unsuitable.

5. For small wireless facilities subject to discretionary approval under section 12.04.070, proof that notice of the application was mailed to all property owners within one thousand feet of the proposed location, including a site map and reasonable description of the proposed facility, and the name, address, and phone number of the applicant.
6. Documents demonstrating the owner is authorized to operate small wireless facilities under state or federal law.

12.05.050 – Requirements for small wireless facilities in the right-of-way.

- A. New structures shall be camouflaged in accordance with plans or designs approved by the county roads commissioner, unless otherwise approved by the board of supervisors.
- B. Small wireless facilities shall utilize the smallest, least visually intrusive antennas, components, and other necessary equipment possible without compromising the quality of the wireless service.
- C. Small wireless facilities shall be maintained in good working order, free of graffiti, and designed to discourage vandalism. The owner shall repair or replace any damaged or vandalized equipment within thirty calendar days of receipt of a written notification from the county roads commissioner.
- D. Every small wireless facility shall be inspected by the owner at least once per year, with the results of the inspection documented in writing. The owner shall provide the written inspection results to the county roads commissioner upon request.
- E. The owner shall provide documentation confirming that a small wireless facility is operating in compliance with federal standards for radio frequency emissions and any other requirements imposed by state or federal regulatory agencies within thirty calendar days of receipt of a written request from the county roads commissioner.
- F. Small wireless facilities that are inoperable for six months or more shall be removed by the owner at the owner's expense.
- G. Small wireless facilities shall include a sign of between 50 and 150 square inches, mounted on the structure at a height of no more than six feet, identifying the name, address and phone number of the owner.

12.05.060 – Insurance.

Owners of small wireless facilities in the right-of-way shall provide insurance determined by the county roads commissioner protecting against personal injury and property damage, naming the County as an additional insured.

SECTION 3. The Board of Supervisors finds that 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.

SECTION 4. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Napa County Board of Supervisors hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 5. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 6. A summary of this Ordinance shall be published at least once five (5) days before adoption and at least once before the expiration of fifteen (15) days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 22nd day of June, 2021, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 13th day of July, 2021, by the following vote:

AYES: SUPERVISORS _____

 NOES: SUPERVISORS _____

 ABSTAIN: SUPERVISORS _____

 ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

 ALFREDO PEDROZA, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Chief Deputy County Counsel</p> <p>By: <u>Meredith Trueblood (e-sign)</u> Code Services</p> <p>Date: <u>May 26, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: _____ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
 _____, CLERK OF THE BOARD