ORDINANCE 2013-1100

MEETING: November 5, 2013

TO: The Board of Supervisors

FROM: Peter Rei, Public Works Director

RE: Waive 2nd Reading & Adopt an Ordinance Amending Chapter 12.04 of the County Code

RECOMMENDED ACTION AND JUSTIFICATION:
Waive the Second Reading and Adopt an Ordinance Amending Chapter 12.04 of the Mariposa County Code Authorizing the Road Commissioner/Public Works Director to Issue Encroachment Permits on roadways with Public Easements that have previously been accepted by the Board.

Currently, the Road Commissioner/Public Works Director is authorized by state law to issue permits for road encroachments on County-maintained roads. This same authority is desired for roadways with previously accepted Public Easements so that Public Works can insure that all encroachments onto roads used by the public are done safely. This Amendment to Chapter 12.04 will authorize the Road Commissioner/Public Works Director to issue encroachment permits for roadways with public easements in a manner similar to the way encroachment permits are issued for roadways that have been accepted as and declared to be part of the County road system.

Encroachment permits are important as they regulate the manner in which driveways and other improvements are constructed on or adjacent to roadways. If constructed properly these driveways and improvements insure that the motorists, bicyclists, and pedestrians using the roadway can do so safely.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board previously approved Chapter 12.04 of the County Code in 1980.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the Ordinance Amendment is not approved; the Road Commissioner/Public Works Director will not be granted the authority to issue encroachment permits for roadways with accepted public easements used by and for the general public.
CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson, Deputy CAO  10/17/2013
MARIPOSA COUNTY ORDINANCE NO. 1100

AN ORDINANCE AMENDING CHAPTER 12.04 OF THE MARIPOSA COUNTY CODE AUTHORIZING THE ROAD COMMISSIONER/PUBLIC WORKS DIRECTOR TO ISSUE ENCROACHMENT PERMITS

WHEREAS, the Board of Supervisors desire to authorize the Road Commissioner/Public Works Director to issue encroachment permits for roadways with accepted public easements used by or for the general public whether or not those roads, streets, lanes and alleys have been accepted as and declared to be part of the County system, and

WHEREAS, the Board of Supervisors have determined that it is in the best interest of the County to amend Chapter 12.04 granting the Road Commissioner/Public Works Director authority to issue all encroachment permits and include Section 12.04.090 of Chapter 12.04 of the County Code, and

WHEREAS, this amendment will add language to Chapter 12.04, by including Section 12.04.090 of the Mariposa County Code.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

SECTION I: Section 12.04.090 of Chapter 12.04 of the Mariposa County Code is hereby amended to read as follows:

12.04.090 - Issuance of Permits

The Road Commissioner/Public Works Director may issue written permits, authorizing the permittee to do any of the following:
(a) Make an opening or excavation for any purpose in any County highway or public easement that has been accepted by the Board on behalf of the public
(b) Place, change or renew an encroachment
(c) Place or display in, under or over any County highway or public easement and 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 Road Commissioner/Public Works Director may immediately remove it. The provisions of this section shall not prohibit the posting of any notice in the manner required by law or by the order of any court in this state.
(d) Plant, remove, cut down, injure or destroy any tree, shrub, plant or flower growing within any county highway or public easement.

Any person who does any of the acts specified in this section, without the authority of such permit, is guilty of a misdemeanor and is liable to the County for all expenses and damages caused thereby.

12.04.091

Any permit issued under the provisions of this chapter may provide that the permittee will pay the entire expense of replacing the highway or public easement that has been accepted by the
Board on behalf of the public, in as good condition as before, and may provide such other conditions as to the location and the manner in which the work is to be done as the Road Commissioner/Public Works Director finds necessary for the protection of the highway/public easement.

12.040.092

Any permit issued to a public agency or a public utility having lawful authority to occupy the highways/public easements shall contain a provision that in the event the future improvement of the highway/public easement necessitates the relocation of such encroachment the permittee will relocate the same at his sole expense. In said event the Road Commissioner/Public Works Director shall serve on the permittee his written demand specifying the place of relocation, and specifying a reasonable time within which the work of relocation must be commenced. The permittee must commence such relocation within the time specified in said demand and thereafter diligently prosecute the same to completion.

All permits other than those issued to public agencies or a public utility having lawful authority to occupy the highways/public easements are revocable on five days’ notice and the encroachment must be removed or relocated as may be specified by the Road Commissioner/Public Works Director in the notice revoking the permit and within a reasonable time specified by the Road Commissioner/Public Works Director unless the permit provides a specified time.

Public utilities may be required, within a reasonable time, to relocate such of their facilities as interfere with an enlarged public use of the highway, except in those cases where the enlarged use of the highway/public easement involves a state freeway.

12.040.092

The Road Commissioner/Public Works Director 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 Road Commissioner/Public Works Director, but no cost of supervision shall be charged by the Road Commissioner/Public Works Director to any public corporation, provided, however, this section shall not operate to prevent charges made pursuant to Government Code Section 6103.6.

(a) Permittees may excavate openings in county highways/public easements to make repairs in cases of emergency requiring immediate action. In such cases the appropriate representative of the Road Commissioner/Public Works Director shall be promptly notified of any such action, and such permittee, at his own expense, shall immediately replace such county highway/public easement in as good condition as before such excavation.

(b) A public agency supplying water service to its inhabitants may, within its corporate
limits, excavate a county highway/public easement without a permit in cases of emergency requiring immediate action; but in such cases the county highway/public easement shall, at the expense of the public agency, be replaced in as good condition as before such excavation.

12.040.093

The Road Commissioner/Public Works Director may require the applicant to file with the Road Commissioner/Public Works Director a satisfactory bond payable to the people of the county in such amount as the Road Commissioner/Public Works Director deems sufficient, conditioned on the proper compliance by the permittee with the provisions of this chapter.

12.040.094

Except as otherwise provided in this section, such a bond shall not be required of any public agency or public utility having lawful authority to occupy the highways/public easement which is authorized by law to establish or maintain any works or facilities in, under or over any public highway/public easement, nor shall the application of any such public agency or public utility for a permit be denied.

The Road Commissioner/Public Works Director may require of any such applicant a bond in a sum not to exceed twenty thousand dollars ($20,000), if such applicant has in fact prior to such application failed to comply with the provisions of this chapter or with the provisions of a previous permit.

12.040.095

Any city, municipal utility district, municipal water district, public utility having lawful authority to occupy the highways is entitled to a blanket permit issued by the Road Commissioner/Public Works Director, renewable annually, for the installation of its service connections and for ordinary maintenance of its facilities located or installed in county highways/public easements; but the Road Commissioner/Public Works Director may revoke any such blanket permit if the permittee fails to comply with the provisions of this article. When any such permit is revoked in a proper case such municipal utility district, municipal water district or public utility is entitled to a permit only on furnishing a bond as provided in Section 12.040.093.

12.040.100

As used in this chapter:
(a) The term “highway” includes all or any part of the entire width of right of way of a county highway or public easement that has been accepted by the Board on behalf of the public, whether or not such entire area is actually used for highway purposes.
(b) The term "encroachment" includes any structure or object of any kind or character placed, without the authority of law, either in, under or over any county highway/public
12.040.101

The Road Commissioner/Public Works Director may immediately remove, or by notice may require the removal of, any of the following encroachments:
(a) An encroachment which obstructs or prevents the use of a county highway/public easement by the public.
(b) An encroachment which consists of refuse.
(c) An encroachment which is a traffic hazard.
(d) An encroachment which is an advertising sign or device of any description, unless excepted by subdivision (c) of Section 1460 of the Streets and Highways Code of the State of California. The Road Commissioner/Public Works Director may return such sign or device to its owner, or otherwise dispose of it in his discretion, except that if the commissioner determines in good faith that the sign or other device is of more than nominal value he shall not effect such other disposition until he has made a reasonable attempt to identify and notify the owner of the sign or device and provided a reasonable time for the owner to retrieve it under provisions of this section. The return of such sign or device to its owner may be conditioned upon payment of an amount sufficient to reimburse the Road Commissioner/Public Works Director for the expense of removal. The Road Commissioner/Public Works Director may recover from the person causing any of the above encroachments, in an action brought in the name of the county for that purpose, the court costs of the Road Commissioner/Public Works Director, the expense of such removal, and any other damages caused by the encroachment.

12.040.102

The Road Commissioner/Public Works Director may, by notice, require the removal of any other encroachment not specified in Section 12.040.101 from any county highway/public easement.

12.040.103

The notice referred to in Sections 12.040.101 and 12.040.102 shall be served upon the occupant or owner of the land, or the person causing, controlling or owning the encroachment, or shall be left at the place of residence of such occupant, owner or person if he resides in the county and is known to the person giving such notice. If the person upon whom notice is to be served does not reside in the county, the notice shall be posted on the encroachment. The notice shall specify the breadth of the highway/public easement, the place and extent of the encroachment, and shall require the removal of such encroachment within 10 days.

12.040.104

If the encroachment is not removed, or its removal not commenced and diligently prosecuted,
prior to the expiration of 10 days from and after the service or posting of the notice, the person causing, owning, or controlling the encroachment forfeits three hundred fifty dollars ($350) for each day the encroachment continues unremoved. The Road Commissioner/Public Works Director shall immediately remove an encroachment that effectually obstructs and prevents the use of the highway/public easement by vehicles.

12.040.105

If the encroachment is denied, and the owner or occupant of the land, or the person causing, owning or controlling the alleged encroachment refuses either to remove it or permit its removal, the Road Commissioner/Public Works Director shall commence, in a court of competent jurisdiction, an action in the name of the county to abate the encroachment as a nuisance. If the commissioner recovers judgment he or she may, in addition to having the nuisance abated, recover a penalty of three hundred fifty dollars ($350) for each day the nuisance remains after service or posting of notice, and also the costs in the action, as provided in Section 12.040.104.

SECTION II: This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code §25123.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 5th day of November, 2013 by the following vote:

AYES: STETSON, JONES, BIBBY, CANN, CARRIER
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE

LEE STETSON, Chair

ATTEST:

RENE LaROCHE, Clerk of the Board

APPROVED AS TO FORM

STEVEN DAHLEM, County Counsel
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

LEE STETSON, CHAIR
KEVIN CANN, VICE-CHAIR
JANET BIBBY
MERLIN JONES
JOHN CARRIER

DISTRICT I
DISTRICT IV
DISTRICT III
DISTRICT II
DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: PETE REI, Public Works Director
FROM: RENE’ LaROCHE, Clerk of the Board

SUBJECT: Waive the Second Reading and Adopt an Ordinance Amending Chapter 12.04 of the Mariposa County Code Authorizing the Road Commissioner/Public Works Director to Issue Encroachment Permits

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on November 5, 2013

ACTION AND VOTE:

4. Public Works 2013-ORD-1100
Waive the Second Reading and Adopt an Ordinance Amending Chapter 12.04 of the Mariposa County Code Authorizing the Road Commissioner/Public Works Director to Issue Encroachment Permits
The staff presentation was made by Peter Rei.
Supervisor Bibby inquired if any additional public comments have been received.
Mr. Rei responded that there have been none.
No public comment.
Supervisor Bibby moved that the item be approved as presented.
The Clerk of the Board read the title and ordinance number into the record.
Supervisor Jones seconded the Motion, and it was approved unanimously.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Janet Bibby, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier

Cc: File
Got it, will run on the 14th (It's gigantic!)
Dan Tucker
mariposagazette@mariposagazette.com

On Nov 7, 2013, at 9:38 AM, Tracy Gauthier wrote:

Good morning Dan,

Attached is Ordinance 1100 for publication in the next issue of the Gazette.

If you have any questions please contact me.

Please reply in receipt of this request.

Thank you
Tracy
<v.2 For Gazette - Adopt an Ordinance Amending Chapter 12 - PW ORD 1100.docx>
AN ORDINANCE AMENDING CHAPTER 12.04 OF THE MARIPOSA COUNTY CODE AUTHORIZING THE ROAD COMMISSIONER/PUBLIC WORKS DIRECTOR TO ISSUE ENCROACHMENT PERMITS

WHEREAS, the Board of Supervisors desire to authorize the Road Commissioner/Public Works Director to issue encroachment permits for roadways with accepted public easements used by or for the general public whether or not those roads, streets, lanes and alleys have been accepted as and declared to be part of the County system, and

WHEREAS, the Board of Supervisors have determined that it is in the best interest of the County to amend Chapter 12.04 granting the Road Commissioner/Public Works Director authority to issue all encroachment permits and include Section 12.04.090 of Chapter 12.04 of the County Code, and

WHEREAS, this amendment will add language to Chapter 12.04, by including Section 12.04.090 of the Mariposa County Code.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

SECTION I: Section 12.04.090 of Chapter 12.04 of the Mariposa County Code is hereby amended to read as follows:

12.04.090 Issuance of Permits

The Road Commissioner/Public Works Director may issue written permits, authorizing the permittee to do any of the following:

(a) Make an opening or excavation for any purpose in any County highway or public easement that has been accepted by the Board on behalf of the public
(b) Place, change or renew an encroachment
(c) Place or display in, under or over any County highway or public easement 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 Road Commissioner/Public Works Director may immediately remove it. The provisions of this section shall not prohibit the posting of any notice in the manner required by law or by the order of any court in this state.
(d) Plant, remove, cut down, injure or destroy any tree, shrub, plant or flower growing within any county highway or public easement.

Any person who does any of the acts specified in this section, without the authority of such permit, is guilty of a misdemeanor and is liable to the County for all expenses and damages caused thereby.

12.04.091

Any permit issued under the provisions of this chapter may provide that the permittee will pay the entire expense of replacing the highway, or public easement that has been accepted by the Board on behalf of the public, in as good condition as before, and may provide such other conditions as to the location and the manner in which the work is to be done as the Road Commissioner/Public Works Director finds necessary for the protection of the highway/public easement.

12.04.092

Any permit issued to a public agency or a public utility having lawful authority to occupy the highways/public easements shall contain a provision that in the event the future improvement of the highway/public easement necessitates the relocation of such encroachment the permittee will relocate at his sole expense.

In said event the Road Commissioner/Public Works Director shall serve on the permittee his written demand specifying the place of relocation, and specifying a reasonable time within which the work of relocation must be commenced. The permittee must commence such relocation within the time specified in said demand and thereafter diligently prosecute the same to completion.

All permits other than those issued to public agencies or a public utility having lawful authority to occupy the highways/public easements will be revocable on five days’ notice, and the final judgment of a court shall be conclusive upon the permittee.

As used in this chapter:

(a) The term “highway” includes all or any part of the entire width of right of way of a county highway or public easement that has been accepted by the Board on behalf of the public, whether or not such entire area is actually used for highway purposes.

(b) The term “encroachment” includes any structure or object of any kind or character placed, without the authority of law, either in, under or over any county highway/public easement.

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The Road Commissioner/Public Works Director may immediately remove, or by notice may require the removal of, any of the following encroachments:

(a) An encroachment which obstructs or prevents the use of a county highway/public easement by the public.
(b) An encroachment which constitutes a public nuisance.
(c) An encroachment which is a traffic hazard.
(d) An encroachment which is an advertising sign or device of any description, unless excepted by subdivision (c) of Section 1460.06 of the Streets and Highways Code of the State of California. The Road Commissioner/Public Works Director may remove such sign or device to its owner, or otherwise dispose of it in its discretion, except that if the commissioner determines in good faith that the sign or other device is of more than nominal value it shall not effect such other disposition until he has made a reasonable attempt to identify and notify the owner of the sign or device and provided a reasonable time for the owner to remove it under provisions of this section. The return of such sign or device to its owner may be conditioned upon payment of an amount sufficient to reimburse the Road Commissioner/Public Works Director for the expense of removal.

The Road Commissioner/Public Works Director may recover from the person causing any of the above encroachments, in an action brought in the name of the county for that purpose, the court costs of the Road Commissioner/Public Works Director, the expense of such removal, and any other damages caused by the encroachment.

12.04.102

The Road Commissioner/Public Works Director may, by notice, require the removal of any other encroachment not specified in Section 12.04.101 from any county highway/public easement.

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The notice referred to in Sections 12.04.101 and 12.04.102 shall be served upon the occupant or owner of the land, or the person causing, controlling or owning the encroachment, or shall be left at the place of residence of such occupant, owner or person if he resides in the county and is known to the person giving such notice. If the person upon whom notice is to be served does not reside in the county, the notice shall be posted on the encroachment. The notice shall specify the breadth of the highway/public easement, the place and extent of the encroachment, and shall require the removal of such encroachment within 10 days.

12.04.104

If the encroachment is not removed, or its removal not commenced and diligently prosecuted, prior to the expiration of 10 days from and after the service of posting of the notice, the person causing, owning, or controlling the encroachment forfeits three hundred fifty dollars ($350) for each day the encroachment continues unre moved. The Road Commissioner/Public Works Director shall immediately remove an encroachment that effectively obstructs and prevents the use of the highway/public easement by vehicles.

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If the encroachment is denied, and the owner or occupant of the land, or the person causing, owning or controlling the alleged encroachment refuses either to remove it or permit its removal, the Road Commissioner/Public Works Director shall commence, in a court of competent jurisdiction, an action in the name of the county to abate the encroachment as a nuisance. If the commissioner's judgment is sustained he or she may, in addition to having the nuisance abated, recover a penalty of three hundred fifty dollars ($350) for each day the nuisance remains after service of posting of notice, and also the costs in the action, as provided in Section 12.04.104.

SECTION II: This Ordinance shall become effective thirty (30) days after the first publication thereof.
Public utilities may be required, within a reasonable time, to relocate such of their facilities as interfere with an enlarged public use of the highway, except in those cases where the enlarged use of the highway/public easement involves a state freeway.

12.040.092

The Road Commissioner/Public Works Director 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 Road Commissioner/Public Works Director, but no cost of supervision shall be charged by the Road Commissioner/Public Works Director to any public corporation, provided, however, this section shall not operate to prevent charges made pursuant to Government Code Section 6103.6.

(a) Permittees may excavate openings in county highways/public easements to make repairs in cases of emergency requiring immediate action. In such cases the appropriate representative of the Road Commissioner/Public Works Director shall be promptly notified of any such action, and such permittee, at his own expense, shall immediately replace such county highway/public easement in as good condition as before such excavation.

(b) A public agency supplying water service to its inhabitants may, within its corporate limits, excavate a county highway/public easement without a permit in cases of emergency requiring immediate action; but in such cases the county highway/public easement shall, at the expense of the public agency, be replaced in as good condition as before such excavation.

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The Road Commissioner/Public Works Director may require the applicant to file with the Road Commissioner/Public Works Director a satisfactory bond payable to the people of the county in such amount as the Road Commissioner/Public Works Director deems sufficient, conditioned on the proper compliance by the permittee with the provisions of this chapter.

12.040.094

Except as otherwise provided in this section, such a bond shall not be required of any public agency or public utility having lawful authority to occupy the highways/public easement which is authorized by law to establish or maintain any works or facilities in, under or over any public highway/public easement, nor shall the application of any such public agency or public utility for a permit be denied.

The Road Commissioner/Public Works Director may require of any such applicant a bond in a sum not to exceed twenty thousand dollars ($20,000), if such applicant has in fact prior to such application failed to comply with the provisions of this chapter or with the provisions of a previous permit.

12.040.095

Any city, municipal utility district, municipal water district, public utility having lawful authority to occupy the highways is entitled to a blanket permit issued by the Road Commissioner/Public Works Director, renewable annually, for the installation of its service connections and for ordinary maintenance of its facilities located or installed in county highways/public easements; but the Road Commissioner/Public Works Director may revoke any such blanket permit if the permittee fails to comply with the provisions of this article. When any such permit is revoked in a proper case such municipal utility district, municipal water district or public utility is entitled to a permit only on furnishing a bond as provided in Section 12.040.093.
I, the undersigned, state:

I am the publisher and principal clerk of the Mariposa Gazette and Miner, an established weekly newspaper of general circulation, within the Town and County of Mariposa, State of California, within the provision of Chapter 1 Division 7 of Title 1 of the California Government Code, and which newspaper has been printed and published weekly in the Town of Mariposa, County of Mariposa, State of California, continuously since the year 1854; that I am a citizen of the United States, over the age of 18 years, and a resident of the County aforesaid; that the notice, of which the annexed is a printed copy, has been published in each regular issue of said newspaper and not in any supplement thereof on the following dates, to wit:

1/14/13

I certify (or declare) under penalty of perjury that the foregoing is true and correct.  

Signature (R.E. Tucker, Publisher)

Date 11/14  2013