

MENDOCINO COUNTY POLICY #14	ENCROACHMENT PERMITS
ADOPTED: November 25, 1986 SUPERSEDED: January 6, 1998 SUPERSEDED: December 4, 2001 SUPERSEDED: September 12, 2017	ADOPTED BY: Minute Order SUPERSEDED BY: Resolution 98-006 SUPERSEDED BY: Resolution 01-268 SUPERSEDED BY: Minute Order

1) **AUTHORITY.**

- a) The California Streets and Highways Code, Division 2, Chapters 5.5 & 6, grant authority and responsibility to the Road Commissioner to issue and enforce written encroachment permits authorizing the permittee to perform various acts within the County Highway.
- b) Title 15, Chapter 15.20 of the Mendocino County Code supplements Division 2, Chapters 5.5 & 6, of the California Streets and Highways Code.
- c) The California Streets and Highways Code, Section 942.5, grants the Board of Supervisors authority to restrict the use of, or close any County Highway whenever the Board considers such closing or restriction of use necessary:
 - i) For the protection of the public
 - ii) For the protection of such County Highway from damage during storms
 - iii) During construction, improvement or maintenance operations thereon.
- d) The California Streets and Highways Code, Section 942.6, allows the Board of Supervisors to delegate the powers contained in Section 942.6 to the County Road Commissioner.

2) **DEFINITIONS.**

- a) **County.** Mendocino County. Established as a political subdivision of the state of California.
- b) **County Highway.** The term "County Highway" includes all or any part of the entire width of a county highway, whether or not such entire area is actually used for highway purposes (Streets and Highways Code Section 1450).
- c) **Department.** The Mendocino County Department of Transportation.
- d) **Encroachment.** The term "encroachment" includes any tower, pole, poleline, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or any structure or object of any kind or character not particularly mentioned in this section, which is placed in, under or over any portion of the county highway (Streets and Highways Code Section 1450).
- e) **Encroachment Permit.** A revocable license granting permission for an encroachment.
- f) **Permittee.** Any person, company, agency, district or other applicant named on an encroachment permit as authorized to perform various acts within the County Highway.
- g) **Road Commissioner.** Director of Transportation. The duties of Road Commissioner are delegated to the Director of Transportation by resolution of the Mendocino County Board of Supervisors.

3) **RESPONSIBILITY.**

- a) **Who is required to obtain an encroachment permit?** All persons, including individuals, contractors, corporations, utilities, cities, special districts, and other government agencies proposing to conduct any activity within, under, or over the county highway, need an

encroachment permit.

- b) **Acceptance.** The performance of any work authorized under an encroachment permit shall constitute the permittee's agreement and acceptance of the provisions, terms, conditions and/or restrictions of the encroachment permit.
- c) **Permittee.** The permit or a copy thereof, must be kept available at all times and must be shown to any representative of the Department or any law enforcement officer upon demand.

4) **FORMS.**

- a) All encroachment permit applications must be on current County forms.
- b) The Department will provide blank County application forms upon request.
- c) The applicant must provide all information requested by the application.

5) **PERMITS.** Unless otherwise specified, work performed under a permit must be completed within one year. At the Department's discretion, an encroachment permit may be issued for a different period of time if the situation warrants. All encroachments shall comply with current Mendocino County Road and Development Standards unless specifically permitted otherwise. Permittees are responsible for reading, understanding and complying with all permit conditions & stipulations, special provisions and general provisions. Encroachment permits are separated into the following categories:

- a) **Road Approaches:** Encroachment permits issued for all types of road approaches shall authorize the permittee to construct and maintain a road approach. A permit will not be required for work classified as maintenance. However, a permit is required if the road approach is being upgraded.
 - i) **Maintenance.** Maintenance of a road approach can be any of the following: repair of driving surface such as filling potholes; trimming of trees and/or brush to maintain adequate sight distance, placing additional rock on existing gravel road approaches.
 - ii) **Upgrading.** Placing asphalt concrete or chip seal overlay on an existing road approach, replacing a culvert, reshaping or otherwise improving an existing road approach, shall constitute upgrading and shall require an encroachment permit and be charged the normal fee.
 - iii) **Types of Road Approaches.**
 - (1) **Residential Driveway Approach.** Limited to a single residence or single user.
 - (2) **Commercial Driveway Approach.** Commercial or other multi use road approaches.
 - (3) **Private Road Approach.** Multi residence or multi user road approaches.
 - (4) **Field Entrance and Temporary Road Approaches.** Surfacing requirement may be waived when intended for temporary or occasional use only. However, frequent use requires a residential driveway permit.
- b) **Excavation/Pavement Patch.** Involves any underground facilities, road and/or shoulder improvements, or any other type of work requiring any form of excavation (excluding the setting of utility poles and road approaches).

Prior to repaving any section of road, the Department will hold a utility coordination meeting to provide advance notice to utility companies and special districts of the planned work. This is intended to provide an opportunity for those utility companies and special districts to perform any maintenance on their facilities within the planned project area. Once the repaving is complete, a five-year moratorium will be placed on those sections of road, during which requests for excavation permits will not be granted.

- c) **Annual.** Issued to utility companies, municipalities, and special districts. Annual permits cover emergency work and routine services. Unless otherwise specified, annual permits shall be valid for a period of one year from the date of issue, ending on the last day of the month.
 - i) Annual permits are issued for the purpose of performing "emergency" work/repairs on facilities, which have previously been installed within the County Highway by permit.

Separate permits for emergency repairs within paved areas must be obtained as soon as possible after the fact to ensure repairs to the pavement are performed satisfactorily.

- ii) Routine service installations may be performed under the annual permit IF they DO NOT involve any open cuts/trenches within the traveled way or any paved areas, AND they are less than 50 feet in length AND less than 50 square feet.
- iii) Bores may be performed under the annual permit IF no pavement is disturbed.
- iv) Bell holes in paved areas require a separate encroachment permit.
- v) All excavations in any paved area, including bell holes, require a separate encroachment permit as well as any routine services greater than 50 feet in length or greater than 50 square feet regardless of their location.
- vi) Installation of routine aerial services may be performed under the annual permit PROVIDING the number of new poles on any extension is limited to THREE or less AND their field locations have been staked by the applicant, and approved by a representative of the Department of Transportation. Pole line extensions of four (4) or more new poles will require a separate miscellaneous encroachment permit.
- vii) Existing poles may be replaced under the annual permit.

d) Road Closures.

- i) Pursuant to Section 942.6 of the California Streets and Highways Code, the Board of Supervisors delegates to the County Road Commissioner the authority to restrict the use of, or close, any County Highway whenever the Road Commissioner considers such closing or restriction of use necessary:
 - (1) For the protection of the public
 - (2) For the protection of such County Highway from damage during storms
 - (3) During construction, improvement or maintenance operations thereon
- ii) The Road Commissioner shall report emergency closures and restrictions of an ongoing nature to the Board of Supervisors at its next public meeting.
- iii) The Road Commissioner shall submit to the Board of Supervisors, for its consideration and action, any proposed closures and restrictions of use for construction, improvement or maintenance operations that are expected to be other than temporary in nature.
- iv) Road closure requests for purposes other than those listed in i(2) or i(3) above shall be considered on an individual request basis from organized groups.
 - (1) All requests for road closures in the unincorporated areas of the County must be accompanied by a fully executed Hold Harmless Statement (on a Department-approved form) and a Certificate of Insurance in the minimum amount of One Million Dollars (\$1,000,000) that specifically names the "County of Mendocino" as an additional insured.
 - (2) Requests for road closures in the unincorporated areas of the County are divided into two types: Standard or Recurring. The Road Commissioner shall review each request for road closure to determine if it is to be processed as a Standard or Recurring road closure. The Road Commissioner's determination in this regard shall be final.
 - (a) Standard Road Closures are defined as any first-time road closures, those that differ substantially from a previously approved road closure for the same event, those which encountered significant problems during a previously approved event or those which could otherwise be publicly or politically controversial. Standard Road Closures are processed by the Department. These requests must be reviewed and approved by the Risk Manager for insurance considerations and by County Counsel for legal determination, prior to being presented to the Board of Supervisors for their consideration and action.
 - (b) Recurring Road Closures are defined as any repetitive event requiring a road closure where the event or activity is substantially the same as the road closure previously approved by the Board of Supervisors, where significant problems have not been encountered during a previous event, and where the event is not otherwise publicly or politically controversial. Recurring Road Closures are processed by the

Department and an encroachment permit is issued if approved.

- (3) Permission granted in response to a road closure request for special events shall be in the form of an encroachment permit issued by the Department.
- e) **Adopt-A-Road.** The Adopt-A-Road Program was established to allow private litter removal, seedling tree planting, wildflower planting, and graffiti removal in county highway rights of way.
- i) Permittee Commitment.
 - (1) Permittee shall pick up litter for two years on a two-mile stretch of roadside four to twelve times a year or more, if needed, or
 - (2) Plant and establish seedling trees and/or shrubs according to an approved plan, or
 - (3) Plant wildflowers for two years according to an approved plan, or
 - (4) Clean or paint a section of wall or bridge for two years.
 - (5) Follow all safety and permit requirements.
 - ii) Department Commitment.
 - (1) The Department will loan volunteers safety gear (orange vests and litter pickers).
 - (2) The Department will provide free trash bags and dispose of the litter that is collected.
 - (3) The Department will provide and install recognition signs.
 - iii) All county roads will be considered for adoption but, the Road Commissioner may determine that certain areas are unadoptable due to safety or other considerations.
 - iv) If an applicant requests an area that is already adopted the applicant can be put on a waiting list and will have priority to adopt that section of road if the current adopter does not renew.
 - v) Permits are renewable for additional two-year periods but they are not transferable to other individuals or organizations.
 - vi) All permittees and volunteers of permitted organizations shall participate in a safety orientation meeting prior to picking up litter under authority of an Adopt-A-Road permit.
 - vii) Adopt-A-Road permits and any subsequent renewals shall be free of charge.
- f) **Road Improvement.** Road improvement encroachment permits are issued in response to situations where a request for road improvements is made, and the Department agrees the improvement is needed, but: (1) county funds and/or crews are not available for such a request, (2) the proposed work will have overall public as well as individual benefits, and (3) the individual or group making the request is willing to have the work performed (to County requirements) without charge or cost to the County. Such road improvement encroachment permits are issued without fee.
- g) **Tree Trimming/Removal.** Prior to performing any tree trimming, tree removal, or brush trimming or removal within the County Highway, a Tree Trimming/Removal encroachment permit must first be obtained.
- i) Utility companies may apply for an annual tree trimming/aerial line maintenance permit. These permits would be issued directly to the utility company and not the contractors working for them. Utility companies applying for this type of annual permit shall furnish a list of contractors who would be authorized to work under this annual permit.
 - ii) The utility company to which an annual tree trimming/aerial line maintenance permit is issued is responsible for providing copies of the permit to each contractor authorized to perform work under that permit. The contractor would be responsible to assure that all crews performing such maintenance work would have a copy of such permit and be familiar with its contents.
 - iii) It is the responsibility of the permittee to determine rights of way locations when there is a question about the title of the trees.
 - iv) Tree pruning shall be performed in compliance with American National Standard for Tree Care Operations-Tree, Shrub and Other Woody Plant Maintenance-Standard Practices (ANSI A300) AND the International Society of Arboriculture (ISA) Tree-Pruning Guidelines, current

versions. Any conflicts between these standards shall be resolved at the discretion of the Road Commissioner.

- v) The CPUC General Orders, California Public Resources Code and other Federal and State laws must be adhered to.
 - vi) By operational policy, the Department does not use herbicides within the County Highway. However, state law regulates herbicide use and the Department has no authority to regulate or prohibit use of a legal process by authorized parties.
- h) **Miscellaneous.** At the discretion of the Road Commissioner, an encroachment permit may be issued for activities within the County Highway other than those outlined above. There are two categories of miscellaneous permit: minor and major. The type will be determined by the Department based on the scope of work.
- i) **Time Extensions.** The Department upon request and payment of appropriate fees may issue time extensions. Time extensions normally are issued for a one-year period and shall expire on the last day of the twelfth month. At the Departments discretion, a time extension may be issued for a different period of time when the situation warrants.
- 6) **UNDERGROUND UTILITY WORK.** Underground utility work may be performed by a public utility company, special district, or by a licensed contractor.
- a) All underground utility work shall be accompanied by drawings sufficient in detail to accurately depict the proposed work.
 - b) The drawings shall also show approximate locations of all existing utilities and any and all drainage courses and structures that exist within the proposed work area.
 - c) All drawings for underground utility work shall have been prepared by the utility company owning the facilities to be installed (or who will accept ownership upon satisfactory installation of those proposed facilities) OR if prepared by an outside agency, such drawings shall have a specific signature block for the signature of an authorized representative of the utility company concerned who, by signing the drawings, grants approval of the planned facility configuration and method of installation.
 - d) At the discretion of the Road Commissioner, utilities may be required to be located overhead in the event that underground utilities would create a safety hazard.
- 7) **FEES.** The Board of Supervisors of Mendocino County has established fee schedules for various types of encroachment permits. Permit applicants are charged a fee to recover the costs of processing and administering encroachment permit operations.
- a) Fee Schedules as established by the Board of Supervisors are kept on file at the Department. These fee schedules will be made available to applicants upon request.
 - b) Appropriate fees shall accompany all encroachment permit applications. If fees are not submitted with the application, review and processing will not proceed until appropriate fees have been submitted.
 - c) Encroachment permit fees shall be waived when the permitted improvements are covered by improvement plans subject to the Improvement Plan-Specification checking and Construction Inspection fee.
- 8) **INSURANCE REQUIREMENTS.** All applications for encroachment permits must be accompanied by a certificate of general liability insurance naming the "County of Mendocino" as an additional insured in an amount of one million dollars (\$1,000,000) and in a form approved by the Road Commissioner. At the discretion of the Road Commissioner, and upon final approval by the Chief Executive Officer or his or her designee, the amount of insurance coverage may be increased or decreased to an amount determined to provide adequate insurance coverage to protect the County and the general public from the risks reasonably associated with the activity authorized by the permit.
- a) Examples of projects which may require lower insurance coverage include, but are not limited to,

- projects which are located a significant distance from the traveled way, do not require use of heavy equipment, or otherwise pose a reduced risk of liability.
- b) Projects which may require additional insurance coverage are those in which the work to be performed is deemed to create risk in excess of \$1,000,000.
- 9) **SURETY.** In accordance with Section 1467 of the California Streets and Highways Code, and Section 15.20.040 of the County Code, the Road Commissioner may require the applicant to file a surety, in form satisfactory to and payable to the county in such amount as the road commissioner deems sufficient, conditioned on the proper compliance by the permittee with the provisions of Chapter 5.5 of the Streets and Highways Code.
- a) Surety shall be in the form of one of the following:
- i) Performance Bond.
 - ii) Cash deposit.
 - iii) Certified or Cashier's check, made payable to the County of Mendocino.
 - iv) Irrevocable Letter of Credit from an approved bank.
 - v) Other forms of surety may be approved at the Road Commissioner's discretion.
- b) All surety shall be retained by the Department for a period of one year from the date the work has been accepted and signed off as being completed in a satisfactory manner.
- c) When a contractor obtains additional encroachment permits for which surety is required, and the amount of that surety is equal to or less than the amount of surety currently deposited with the Department, no additional surety shall be required as long as surety in that minimum amount remains on deposit with the Department. If the amount of surety required is greater than the amount of surety currently deposited with the Department, an amount equal to the difference shall be provided bringing the total amount of surety up to the larger amount required. The higher amount of surety shall be retained by the Department until no longer required by encroachment permit.
- 10) **COUNTY BUSINESS LICENSE.** As required by Chapter 6.04 of the County Code, any contractor performing work under an encroachment permit in the County must possess a valid County Business License. No permit shall be issued until contractor has provided sufficient evidence of said license. This requirement shall not apply to any person or organization exempted by law.
- 11) **UNAUTHORIZED ENCROACHMENTS.** Unauthorized encroachments will be resolved in accordance with the provisions of the Streets and Highways Code, or any other mechanism as allowed by law.