



# Mendocino County

## Legislation Details (With Text)

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**On agenda:** 3/7/2017      **Final action:**  
**Title:** Discussion and Possible Action Regarding Mendocino County Code Section 15.20 "Encroachment Upon County Highways" and Possible Encroachment Permit Policy Considerations (Sponsor: Transportation)  
**Sponsors:** Transportation  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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**To:** Board of Supervisors

**From:** Transportation

**Meeting Date:** March 7, 2017

**Department Contact:** Howard N. Dashiell

**Phone:** 463-4363

**Item Type:** Regular Agenda

**Time Allocated for Item:** 30 min.

**Agenda Title:**

Discussion and Possible Action Regarding Mendocino County Code Section 15.20 "Encroachment Upon County Highways" and Possible Encroachment Permit Policy Considerations (Sponsor: Transportation)

**Recommended Action/Motion:**

Approve possible Encroachment Permit Policy considerations regarding Mendocino County Code Section 15.20 "Encroachment Upon County Highways."

**Previous Board/Board Committee Actions:**

Board of Supervisors meeting on February 14, 2017, request for Mendocino County Department of Transportation (MCDOT) to look into insurance requirements for encroachment permit applicants.

**Summary of Request:**

To date MCDOT has not required permittees to show proof of insurance or "name the County as an additional insured". Our County encroachment permit process is modeled after Caltrans' permit process that does not require proof of insurance. Currently, MCDOT evaluates encroachment permit applications using applicable policies and assessing the potential impact of proposed encroachments with regard to protecting the County Road and the operation and safety of traffic. MCDOT can require an encroachment permit applicant to post a

bond estimated to cover the cost of any repair or damage to County Road facilities during construction or maintenance activities covered by the permit. MCDOT requires this when an applicant has shown a poor record of compliance or a lack of willingness to restore the County Road.

With respect to utilities, MCDOT does not specify utility construction standards, nor do we have the expertise to do so. It is generally understood that utilities that serve the public (and are already subject to and regulated by state and federal law) must use road right-of-ways to serve their customers and to provide said services (electric, communication, water, and sewer) to the public. Utilities using the right-of-way are solely responsible for the design, installation, construction, and maintenance of their facilities and bear all responsibility for their associated activities. The majority of the “traveled way” encroachment activity is performed by utilities, or contractors hired by the utilities. These utilities and contractors have public standing by virtue of past franchise agreements with the County or because they became Special Districts recognized by the County with some form of past County procedures and consent. MCDOT negotiates with utilities on changes to the placement of surface obstructions with regard to traffic operations and the permittee is subject to inspection and certification of compliance with road standards.

California Streets and Highways Code does give MCDOT the authority, through the permitting process, to set conditions for encroachment activities within the public right-of-way with regard to protecting the County Road and the operation and safety of traffic. MCDOT standards include trench restoration, minimum depth cover, and surface restoration. MCDOT does not supervise or manage permittee operations; they are solely responsible and liable for their activities.

MCDOT has been asked to consider, and is seeking Board of Supervisors guidance on, whether or not proof of insurance or “name the County as an additional insured” should be required of encroachment permit applicants. MCDOT has done some background research on this proposed matter and the information is discussed below:

MCDOT staff looked into how various other counties and municipalities are handling the issue. The results indicate many varied systems are in place. Many transportation and public works departments do have an insurance requirement; of those that do, most insurance requirements have been incorporated into county or city code. Furthermore, many counties and municipalities allow large self-insured utilities to have either a public utility exemption or accept a letter of self-insurance in lieu of an insurance certificate.

MCDOT staff contacted a variety of our permit holders to see how an insurance requirement would affect them. The larger contractors would have no problem providing proof of insurance or naming the County as an additional insured. Utilities, however, responded somewhat adversely to the idea of a new insurance requirement, with some willing to do it and others willing to look into it. Large self-insured utilities said they would have to process a written County request for specific insurance requirements. I assume this means they would run the written County request by their legal departments.

Small businesses and homeowners may be financially burdened if they need to pay an extra fee to add an additional insured to their policy. In the case of small utility districts, this cost would likely be passed onto their ratepayers. Some of the small utilities wanted the County to absorb any additional costs of an insurance requirement. Several utilities stated they realize they are aware of their responsibility for their actions within the County right-of-way and were already following the law- including maintaining proper vehicle and liability insurance.

ALL utilities responded that they have a legal requirement to maintain service regardless of the County’s willingness to issue a permit. Because utilities have the right to place their facilities within the County right-of-way and to serve their customers, this attitude does have some merit.

If the County does move forward with an ordinance requiring insurance, I recommend the following considerations be taken into account:

- Only require insurance for work within the “traveled way” and associated with the specific activities under the required permit
- Include an exemption for utilities and Public Agencies
- Only require proof of insurance rather than require the County be named as an additional insured

It may be reasonable and necessary to require insurance in order to protect the County from liability; however, due to the short amount of time MCDOT staff had to research this item, I highly encourage the County to do the necessary in depth research to ensure we are operating within our legal limits. Also, consider the liability ramifications of an insurance requirement for already existing utility facilities and continued occupancy of the public right-of-way, as this might imply that the County is in part responsible for the existence of those facilities.

**Alternative Action/Motion:**

Not require proof of insurance or not list the County as an additional insured; and provide direction to staff.

**Supplemental Information Available Online at:** N/A

**Fiscal Impact:**

**Source of Funding:** N/A

**Budgeted in Current F/Y:** N/A

**Current F/Y Cost:** N/A

**Annual Recurring Cost:** N/A

**Supervisory District:** All

**Vote Requirement:** Majority

**Agreement/Resolution/Ordinance Approved by County Counsel:** N/A

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**CEO Liaison:** Janelle Rau, Deputy CEO

**CEO Review:** Yes

**Comments:**