

ORDINANCE NO. 1656

AMENDMENT TO ENCROACHMENTS ORDINANCE

The Board of Supervisors of the County of Amador ordains as follows:

SECTION I. Chapter 12.10 of the Amador County Code, as adopted by Ordinance 1512

§ 12 (part) 2000, is hereby repealed.

SECTION II. Chapter 12.10 is hereby added to the Amador County Code as follows.

ENCROACHMENTS

12.10.010 Definitions.

A. "Encroachment" includes any structure or object of any kind or character placed without the authority of law, either in, under, or over any county road.

B. "County road" includes all or any part of the entire width of the right-of-way of all roads accepted into the county road system, whether or not such entire area is actually used for roadway purposes.

C. "Excavation" means the movement or removal of earth, rock, pavement or other material in, on or under the ground. The term includes auguring, backfilling, digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and tunneling.

12.10.020 Encroachments—restricted.

It is unlawful for any person to make any excavation or place an encroachment in, under or over any county road or right-of-way whether or not currently improved, except in the manner and mode provided in this chapter. Work conducted by public utility companies within exclusive public utility easements is exempt from the permit requirements under the terms of this chapter.

12.10.030 Exemptions.

The provisions of this chapter shall not apply to work done by the County or by any person performing work for the County pursuant to a contract.

12.10.040 Permit application—Information required.

Any person desiring to excavate, or to cause, allow or place any encroachment in, under or over any place mentioned in Section 12.01.020, shall file a written application with the Director of Public Works. The application shall be in the form prescribed by the Director, and shall give the following information:

- A. Name and address of the applicant, the owner or other person responsible for the proposed encroachment, and the contractor or other person actually making the proposed encroachment.
- B. Location of the encroachment;
- C. Nature of the encroachment;
- D. Estimated time to begin and complete the work or placement of an encroachment;
- E. Site plans showing relation of encroachment to county road;
- F. Other information as may be required by the Director;
- G. Signature of the applicant, property owner, and contractor.

12.10.050 Emergency work.

If in the course of events the owner of a previously approved encroachment finds that emergency repairs are necessary to protect the facility, or to protect the investment of the owner and/or to provide continuing service to the public, and the owner of the facility finds that the county office that would issue the encroachment permit is not open, the owner may, after reporting to the appropriate law enforcement agency the nature of any encroachment into the public roadway that may affect vehicle traffic or pedestrians, and after notifying the Regional Notification Center (Underground Service Alert), conduct such work as is necessary to cause the needed repairs, provided that the owner of the facility requests a permit for the work conducted on the next day that the county office that issues encroachment permits is open. Notwithstanding any other provisions of this code, no emergency work may be done if law enforcement determines that the proposed work would represent an unreasonable threat to the public health, welfare or safety.

12.10.060 Annual permits for public utilities.

A. Any special district (as defined by Government Code § 16271(d)) providing public utility services or any person doing business as a public utility subject to the jurisdiction of the Public Utilities Commission of the State, may obtain a permit from the Director of Public Works, valid for one (1) year from the date of issuance, permitting the person to trim, brace, remove or perform such other acts with respect to trees growing upon the county roads with the unincorporated areas of the County, or which grow upon private property, to the extent that such trees encroach upon the county roads, as may be necessary to maintain the safe operation of that person's business.

12.10.100 Permit—Refusal or revocation.

A. Any application for an encroachment permit may be denied, and any encroachment permit may be revoked, by written order of the Director of Public Works, effective immediately, a copy of which shall be mailed to the permittee at the addresses specified in the permit, upon any one or more of the following grounds:

1. Violation of any of the provisions of this chapter;
2. Misrepresentations of any material fact in the application;
3. Violation of the terms or conditions of the permit;
4. Failure to post, or withdrawal of, the required deposit.

B. Any encroachment permit may be revoked at any time, without cause, by resolution of the Board of Supervisors adopted after mailing a notice of intention to revoke the permit to the permittee at the address specified in the permit at least ten (10) days prior to the adoption of the resolution.

12.10.110 Failure to complete or defects in work—Notification to remedy—Remedy by County.

If an encroachment is not completed within the time allowed by the permit, or the encroachment is not constructed or maintained in the manner required by this chapter or the permit, the Director of Public Works shall notify the permittee in writing of the deficiency. If the encroachment is not completed or the defect is not remedied within the time specified in the written notice, the Director of Public Works may cause the encroachment to be completed or the defect to be remedied. If, in the opinion of the Director of Public Works, the uncompleted encroachment or defect constitutes an immediate danger to the public health, safety or welfare, the Director may immediately complete, remedy, or remove the encroachment without prior notice to the permittee.

12.10.120 Costs of repair deducted from performance security.

If the Director of Public Works completes, remedies, or removes an encroachment as provided in this chapter, the cost of the associated work shall be deducted from the permittee's performance security. If the performance security is insufficient to fully reimburse the County for the cost of the work, the permittee shall be liable to reimburse the County for the costs of completing or remedying the defect that is in excess of the amount of the performance security. The payment of these excess costs shall be due and payable within five (5) days after delivery to the permittee of a written statement of the amount due.

12.10.070 Permit fee.

The fees for processing and reviewing the permit application and conducting the necessary inspections shall be established by ordinance of the Board of Supervisors.

12.10.080 Performance security required—Amount.

A. Prior to issuance of any encroachment permit, each applicant shall be required to deposit a performance security with the County, in the form of cash, cashier's check, certified check, or other form acceptable to the Director of Public Works. The amount of the security shall be 75% of the estimated cost of the work to be performed under the encroachment permit. The estimated cost of the work shall be determined in writing by a licensed engineer or licensed contractor, and is subject to the approval of the Director of Public Works. The security shall guarantee the faithful performance of all terms and conditions of the permit.

B. If the amount of security is inadequate to restore or repair any damage to the county road caused by incomplete or improper work done by the permittee, the Director of Public Works shall have recourse against the permittee for any additional amount of money necessary to restore or repair the county road, or complete the encroachment.

C. The Director of Public Works, may in his or her discretion, waive or vary the security required by this section for minor encroachment work or utility installations.

D. If a driveway encroachment can not be completed as required for a Certificate of Occupancy due to seasonal adverse weather or soil conditions, or other unforeseen conditions beyond the applicant's control, the Director of Public Works may allow the issuance of a Certificate of Occupancy by the Building Department prior to completion of the encroachment when the applicant consents to additional conditions and provides additional security to guarantee completion of the driveway encroachment by executing a Driveway Completion Agreement.

12.10.090 Insurance.

If, in the opinion of the Director of Public Works, the work proposed in any permit application entails any undue risk of injury, death, or damage to any member of the public, he may, prior to issuing such permit, require the applicant to provide proof of liability insurance in the amount specified by the County Risk Manager, naming Amador County, its employees, officers, officials, and volunteers as additional insured.

12.10.130 Performance security—Refund.

Upon satisfactory completion of all the terms and conditions of the encroachment permit, any remaining portion of the performance security shall be returned to the permittee. Unless required by prior agreement or law, the amount returned will not include interest.

12.10.140 Appeal.

A. The actions of the Director of Public works in refusing to issue an encroachment permit, failing to act upon an application for an encroachment permit within thirty days after it is filed and deemed complete by the Director of Public Works, imposing unreasonable terms or conditions on the permit, or revoking an encroachment permit, may be appealed to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board within ten (10) days following from the action appealed.

B. The notice shall state one or more of the grounds for an appeal set forth in this section relied on by the appellant. The Clerk shall within 30 days of notice schedule the appeal to be heard by the Board of Supervisors and shall notify the appellant and the Director of Public Works of the date and time of the hearing on the appeal. At the time fixed for the hearing, the Board of Supervisors may take such action on the permit as the Board finds just, and may continue the hearing on the appeal from time to time by order entered into its minutes specifying the date and time of the continued hearing.

12.10.150 Violation.

A. Any person violating any provision of this chapter shall be guilty of an infraction and shall be punishable by a fine not exceeding one hundred dollars (\$100) for the first violation and a fine not exceeding two hundred dollars for a second violation within one year. The third and each successive violation of this chapter in the period of one year shall constitute a misdemeanor and shall be punishable by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the County Jail for a term not to exceed six (6) months, or by both such fine and imprisonment. Each day any violation of this chapter continues shall constitute a separate offense.

B. The violation of any provision of this chapter shall constitute a public nuisance subject to abatement in any manner authorized by law, including, but not limited to, summary abatement by the Director of Public Works pursuant to section 1483 of the Streets and Highways Code and section 3494 of the Civil Code; abatement by actions authorized by section 373(a) of the Penal Code and chapter 6, division 2 of the Streets and Highways Code; and by suit for injunction.

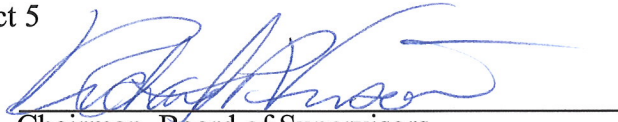
SECTION III. This ordinance shall be published within fifteen or days after the date hereof in a newspaper of general circulation printed and published in the County of Amador, State of California, and shall become effective thirty days after the date hereof.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 29th day of August 2006, by the following vote:

AYES: Richard P. Vinson, Louis D. Boitano, Rich F. Escamilla, and Richard M. Forster

NOES: None

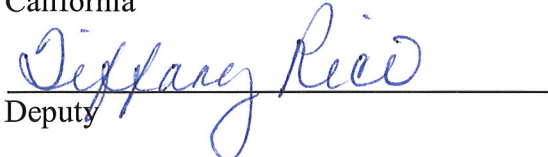
VACANT: District 5



Chairman, Board of Supervisors

ATTEST:

MARDELL ANDERSON, Clerk of the
Board of Supervisors, Amador County,
California



Deputy