

ORDINANCE NO. 638
AN ORDINANCE OF THE TOWN OF ROSS REPEALING TITLE 12,
CHAPTER 12.08 OF THE ROSS MUNICIPAL CODE AND
ADOPTING, IN ITS STEAD, A COMPREHENSIVE ORDINANCE
REGULATING ENCROACHMENTS IN THE
PUBLIC RIGHT OF WAY

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Title 12, Chapter 12.08, "Obstructions" is hereby repealed in its entirety and replaced with the following Chapter 12.08, "Encroachments in the Public Right-of-Way," as follows:

Chapter 12.08

ENCROACHMENTS IN THE PUBLIC RIGHT-OF-WAY

Sections:

12.08.010	Purpose
12.08.020	Definitions.
12.08.030	Application.
12.08.040	Encroachment Permit Required.
12.08.050	Exceptions to Permit Requirement.
12.08.060	Encroachment Permit Application.
12.08.070	Permit Authority of the Director.
12.08.080	Permits Requiring Town Council Approval.
12.08.090	Criteria for Approval or Denial of an Encroachment Permit.
12.08.100	Maintenance of Work and Encroachments.
12.08.110	Storm Water Drainage.
12.08.120	Driveways.
12.08.130	Conditions Imposed on Encroachment Permits.
12.08.140	Indemnification.
12.08.150	Bonding and Insurance.
12.08.160	Denial of Encroachment Permit
12.08.170	Expiration or Revocation of Encroachment Permit; Restoration of Right-of-Way.
12.08.180	Abandoned Driveways.
12.08.190	Rules and Regulations.
12.08.200	Pre-existing Encroachments.
12.08.210	Penalties.

12.08.010 Purpose.

The public rights-of-way are unique public resources held in trust by the Town for the benefit of the public. The purpose of this Chapter is to regulate right-of-way development in Ross, which will allow the Town to provide necessary roadway improvements to meet vehicular circulation needs and allow the safe passage of emergency vehicles, vehicles, pedestrians, and bicyclists. In addition, proper management of public rights-of-way will help ensure the safety of the public right-of-way, availability of areas for safe parking of vehicles, the provision of adequate storm water drainage, and the maintenance of the Town's numerous street heritage trees.

12.08.020 Definitions.

For purposes of this Chapter, certain terms are defined as follows:

- (1) "Town" means the Town of Ross.
- (2) "Director" means the director of public works or his or her designee.
- (3) "Encroach" or "encroachment" means going upon, over or under a public right-of-way, or using a public right-of-way or a public or private area adjacent to a public right-of-way in such a manner as to prevent, obstruct or interfere with the intended use of that way, or a modification of mode of use of right-of-way, including but not limited to excavation or disturbance, erection, construction, placement or maintenance of any physical improvement on or under the right-of-way; planting or maintaining any landscaping; or placement or maintenance of any waste material, except the placement of solid waste or recyclables in authorized receptacles for pick-up in accordance with Chapter 6.12 of this Code.
- (4) "Landscaping" means any tree, shrub, grass, groundcover, plant, hedge, ornamental border, solid landscaping feature, or growing thing.
- (5) "Permittee" means any person that has been issued an encroachment permit pursuant to this Chapter or their successor in interest.
- (6) "Person" includes any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties, not including the Town.
- (7) "Public Right-of-Way" means the area in, upon, above, beneath or across any public street, road, lane, court, alley, boulevard, sidewalk, median, parkway, public pathway or easement for vehicular, pedestrian, and bicycle travel within the Town.

12.08.030 Application.

This Chapter shall apply to all encroachment, construction, alteration, landscaping, and hardscaping in the public right-of-way, including but not limited to the installation of structures, carports, garages, entry walks, fences, walls, planting boxes, driveways, trees, landscaping, sidewalks, road approaches, or utilities, street excavations/backfill, and construction activities

that interfere with use of the right-of-way. Encroachment permits for construction within the public right-of-way will only be issued when desirable to the Town and where proposed construction will not unreasonably limit existing or potential public use of the area. Only under extraordinary circumstances will fences and entrance structures located within the public right-of-way be considered desirable.

12.08.040 Encroachment Permit Required.

- (1) No person shall encroach, obstruct, or cause any encroachment to be placed upon, in, or under any public street, sidewalk or other public property right of way without an encroachment permit issued under the provisions of this Chapter. All obligations, responsibilities and other requirements of the permittee as described in this Chapter shall be binding on subsequent owners of the encroaching structures or improvements, whether or not they have received actual notice of such obligations, responsibilities or other requirements. Unless specifically provided otherwise in the permit approval, any permit or license granted under this Chapter shall be nonexclusive and shall be subject to the right of the town, or any other person entitled thereto, to use the designated part of the public right-of-way for any purpose for which it may be lawfully used, and no part of the public right-of-way shall be unduly obstructed at any time.
- (2) Any action done under the authority of a permit issued pursuant to this Chapter shall be done in accordance with this Code and the terms and conditions of such permit.
- (3) Any encroachment for which a permit or license is required and for which no permit or license has been issued by the town pursuant to this Chapter or other applicable regulation, shall be deemed a violation of this Chapter and a public nuisance, and may be subject to after the fact permit fees or abated by the town pursuant to Title 9 of this Code.
- (4) The Town's permitting authority shall be exercised in accordance with section 253(c) of the Telecommunications Act of 1996 and California Public Utilities Code Sections 7901 and 7901.1.

12.08.050 Exceptions to Permit Requirement.

Notwithstanding Section 12.08.030 above, the following shall be exempt from the provisions of this Chapter:

- (1) Maintenance and repair of utilities by public utilities which have an existing easement or permit for utility service, where such work will not affect traffic in an arterial street.
- (2) The making of an emergency street cut or excavation in the public right-of-way by a utility or special district to repair a broken or defective pipe, facility or conduit lawfully on or under a public arterial street, as may be necessary for the preservation of life and property when an urgent necessity arises and the offices of the town are closed, provided that reasonable vehicular and pedestrian barriers or other traffic controls shall be provided during the performance of any such repairs. The utility or special district

performing the repair work shall notify the public works department by telephone at the time any such repair work is commenced.

- (3) Street tree work, including but not limited to planting, trimming, or removal of any new or existing tree within the public right-of-way where a permit has been issued for such work pursuant to Chapter 12.24 and/or Section 9.04.070, where such work will not interfere with use of the public right-of-way.
- (4) Sidewalk cafes and restaurants that have been permitted pursuant to Title 18 of this Code.
- (5) Street closures for special events for which a permit has been issued.
- (6) Awnings, signs, eaves or other minor architectural features of buildings extending no more than four feet (4') into the public right-of-way; provided that nothing herein shall authorize the placement of signs directly on any street or public right-of-way.
- (7) The actions of any officer or employee of the Town engaged in the discharge of official duties.
- (8) The performance of work under contracts with the Town, including work for Town projects and/or events.

12.08.060 Encroachment Permit Application.

An application for an encroachment permit shall be filed with the Director. The application shall be signed by the applicant and shall include the following:

- (1) The name, address, and telephone number of the applicant.
- (2) The name, address, and telephone number of the contractor if any proposed work is to be done by a contractor.
- (3) The location, purpose, extent and nature of the proposed work.
- (4) Plans showing all facilities to be located in the public right-of-way, including any information required by the Director.
- (5) The period of time when the proposed work will be performed.
- (6) A certificate of insurance in a form satisfactory to the Town, naming the Town, its officers, and employees, as additional insureds, unless waived by the Director pursuant to Section 12.08.150(2).
- (7) Posting of any security bond as required by this Chapter.
- (8) Any other specifications and analyses the Director or the Town may reasonably require to describe the work, its location in and its effect on the right-of-way, including the mode of operation, maintenance, and use.
- (9) Payment of the permit fee as prescribed by Council resolution.

12.08.070 Permit Authority of the Director.

The Director shall have the authority to act upon and issue permits under the criteria set forth in this Chapter for the following types of encroachments:

- (1) Minor encroachments for objects or materials which are not affixed to real property, including, but not limited to, ornamentation, flower containers, landscaping, and other encroachments not regulated by permits issued under other Chapters.
- (2) Temporary encroachments of less than one year in duration that do not substantially interfere with the use of the public right-of-way, including but not limited to short-term construction activity, debris boxes, tree trimming and maintenance, and painting or washing of building exteriors adjacent to the right-of-way.
- (3) Other minor encroachments which the Director determines will not substantially interfere with the public use of the right-of-way, unless such encroachments require Council approval under other Chapters.

Any person who wishes to appeal the Director's decision regarding an encroachment permit has the right to appeal the decision to the Town Council within 10 days of the decision pursuant to Chapter 18.60 of the Town Code.

(4) Major encroachments for any permanent structure above, on, or beneath the surface of the public right-of-way, including the installation or replacement of fences, driveways, or structures on the public right-of-way.

(5) Any encroachment upon any public street which closes the street to public use, or which substantially interferes with public use of the right-of-way, except special events for which a separate permit is issued under this Code.

(6) Any other type of encroachment which would substantially interfere with public use of the right-of-way or would exceed one year in duration, and is not specifically authorized by any other provision of this Code.

12.08.080 Criteria for Approval or Denial of an Encroachment Permit.

In reviewing applications for an encroachment permit, the Director or the Town Council shall consider the following factors:

- (1) Whether the encroachment for which the permit is requested is necessary or desirable.
- (2) Whether the encroachment creates a substantial adverse impact on persons or property.
- (3) Whether the encroachment will adversely affect the public health, welfare, and safety.
- (4) Whether the encroachment will adversely affect safe circulation of vehicles, pedestrians, bicyclists, and emergency vehicles.
- (5) Whether the encroachment will adversely impact existing parking conditions.
- (6) Whether the encroachment will result in the removal of existing heritage trees or protected vegetation.

- (7) Whether the encroachment conforms with the Town's policy to retain, to the extent feasible, existing right-of-way areas in an unimproved condition, and not improved as additional yard area or parking area by the adjacent property owner.
- (8) Whether the encroachment is in conformance with Town standards, policies, and requirements, including but not limited to Chapter 15.54 (Stormwater Management) of this Code.
- (9) Whether a property line survey is necessary

All work which is permitted within a right-of-way shall conform to Town building and construction standards, the Town Code, and any policies related to public safety, drainage, parking, landscape preservation, and provision of emergency services.

12.08.090 Maintenance of Work and Encroachments.

The permittee or his/her successor in interest shall be responsible for maintenance and repair of any encroachment for which a permit was issued, and for the street or other Town property to the extent that the maintenance and repair of such street or other Town property is required by reason of the existence of the encroachment. Should any work constructed under a permit become defective at any time through lack of proper maintenance, such defect shall be considered a sufficient reason for revocation of the permit.

12.08.100 Storm Water Drainage.

The Town may require that encroachments incorporate, to the extent feasible, permeable rather than impermeable pavement finishes within the public right-of-way. When selecting between permeable and impermeable pavements, the Town will consider such factors as durability, maintenance, potential circulation issues and damage to vehicles, and construction cost. In cases where conventional impermeable finishes should be selected, the Town may impose additional conditions, such as storm water detention facilities, on the encroachment in order to comply with Chapter 15.54 (Storm Water Management) of this Code.

12.08.110 Driveways.

All driveway entrances or approaches constructed in the public right-of-way shall be installed, constructed, and maintained so as not to impair the sidewalk area for pedestrian travel and in conformance with all Town standards and requirements regulating the location, size, grade and the type of materials to be used in the paving of the sidewalk area and the grade and slope of any such driveway entrances or approaches.

12.08.120 Conditions Imposed on Encroachment Permits.

Conditions may be imposed on any encroachment permit as deemed necessary to protect the Town, persons, property, or the public health, welfare, and safety or to ensure that the

encroachment will be installed, constructed, and maintained in conformance with Town standards, requirements, and policies.

12.08.130 Indemnification.

As a condition of issuance of any encroachment permit pursuant to this Chapter, the permittee and legal owner of the adjacent property shall execute a recordable covenant running with the land, in a form approved by the Town Attorney, agreeing (to the maximum extent permitted by law) to indemnify, defend, and hold the Town and its employees, officers, and agents harmless against any liabilities, losses, claims, actions, or demands for any damages, including injury to or death of any person or damage to property, arising out of or connected with the installation, operation, and maintenance, of any facilities in the public right-of-way by permittee, their employees, or their agents. In addition, the permittee shall surrender possession of the encroachment structure and release the Town from all claims in the event the Town determines to widen or improve the street, alley, or other public place where the encroaching structure is situated.

12.08.140 Bonding and Insurance.

Upon issuance of a permit under this Chapter, the permittee shall post and, at all times while the permit is in existence, maintain a security bond and insurance as required by the provisions of this Chapter.

- (1) The amount of the bond shall be designated by the Director or Town Council at the time of approval of the permit, and shall be in an amount which is determined to be sufficient for removal of the encroachment in the event the permittee fails to comply with the conditions of the encroachment permit. The bond may be waived where it is determined that any injury to the Town from the existence of the encroachment is minimal. Any security bond required by this section may be cash, or cash equivalent security approved by the Town Attorney.
- (2) The amount of required insurance shall be designated by the Director or Town Council at the time of approval of the permit, and shall be in an amount which is determined to be sufficient to adequately protect the Town, persons, and property for injuries or damages which may be caused by the encroachment authorized by the permit; provided further, the Director may waive the requirement for insurance where the risk is determined to be low.

12.08.150 Denial of Encroachment Permit.

Upon denial of a permit, the applicant shall be notified in writing of the denial and furnished a statement of the reasons for such denial.

12.08.160 Expiration or Revocation of Encroachment Permit; Restoration of Right-of-Way.

The term of an encroachment permit shall be determined at the time of approval and the rights afforded under such permit shall not extend past that term. Moreover, any encroachment permit issued under this Chapter shall be revocable without cause upon thirty (30) days' written notice to the permittee.

Upon expiration or revocation of an encroachment permit, the permittee shall remove all encroachments, obstructions, impediments, materials or rubbish from the right-of-way and replace, repair, or restore the right-of-way to its condition before the issuance of the encroachment permit, at the permittee's sole expense, unless otherwise provided in the permit. Failure to remove an encroachment pursuant to this section shall constitute a public nuisance and may be abated by the Town pursuant to Chapter 9.04 of this Code.

12.08.170 Abandoned Driveways.

Any driveway for which there is no immediate reasonable use, or where the use or condition of the abutting property has been so changed that the driveway is no longer necessary, shall be deemed abandoned, and shall be removed and replaced with curb, gutter, and sidewalk meeting the standards of the Town Code, to fit the existing line and grade of adjacent standard curb, gutter and sidewalk, within 30 days after abandonment. Any driveway abandoned as defined above and not removed or reconstructed within 30 days after its abandonment, shall constitute a public nuisance and may be abated by the Town pursuant to Chapter 9.04 of this Code.

12.08.180 Rules and Regulations.

The Director is authorized to issue rules and regulations for implementation of the provisions of this Chapter, which shall be binding upon permittees.

12.08.190 Pre-existing Encroachments.

The Department of Public Works is hereby authorized to require the removal or modification as necessary, within a timely fashion, of any and all pre-existing improvements within the Town's right-of-ways which fail to comply with the policies and requirements described in this Chapter.

12.08.200 Penalties.

Violations of this section, including but not limited to installation or placement of an encroachment without a permit or failure to remove an encroachment pursuant to Section 12.08.170, may be prosecuted as a **misdemeanor** or an infraction pursuant to Chapter 1.04 of this Code. Illegal encroachments constitute a public nuisance and may be abated by the Town pursuant to Chapter 9.04 of this Code. The person responsible for installing or maintaining an illegal encroachment in violation of this Chapter shall be liable for the costs of removal and the cost of restoring the property to its original condition in addition to any damages arising from the illegal encroachment.

SECTION 2: Severability. The Town Council hereby declares every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 3: This Ordinance shall go into effect on _____, 2012, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Ross Town Council on the ____ day of _____, 2012, and was adopted at a regular meeting of the Ross Town Council on the ____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

P. Rupert Russell, Mayor

ATTEST:

Linda Lopez, Town Clerk