



# Board Agenda Item 6

DATE: August 18, 2020

TO: Board of Supervisors

SUBMITTED BY: Steven E. White  
Department of Public Works and Planning

SUBJECT: Policy on Encroachments in the County Right-of-Way

## RECOMMENDED ACTION(S):

**Consider and approve Resolution adopting a Countywide Policy addressing Encroachments in the County Right-of-Way and making certain delegations of authority relative to Encroachments to the Director of Public Works and Planning, or designee.**

Approval of the recommended action will memorialize and standardize the methodology and steps the Department of Public Works and Planning ("Department") will take when dealing with encroachments in the County Right-of-Way ("ROW"). This item is countywide.

## ALTERNATIVE ACTION(S):

Your Board may reject the proposed policy document or request modifications to the proposed policy document and direct staff to return to the Board with a final policy that incorporates your Board's direction.

## FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. All costs associated with this matter are funded through the Road Fund, Org 4510, or through user fees, which are addressed in the proposed policy document. Staff intends to return to your Board with proposed fees prior to the effective date of the policy document.

## DISCUSSION:

Physical encroachments by adjoining or underlying property owners sometimes exist in the County's ROW's. Some of these encroachments are benign, not constituting an obstruction of the roadway or a safety hazard, but nevertheless benefitting the property owner. However, some of these encroachments do obstruct the ROW or constitute a safety hazard. When Department staff becomes aware of encroachments that may constitute a safety hazard, staff takes appropriate action to address or abate the encroachment.

On April 28, 2020, your Board directed Staff to work with County Counsel and to return to your Board with a proposed policy to address encroachments on a countywide basis to allow some flexibility in addressing benign encroachments which would otherwise constitute a nuisance as a matter of law. Staff has worked with County Counsel to develop the proposed policy document.

## **Legal Standard**

An encroachment constitutes a trespass on the County's ROW. As a nuisance per se, an encroachment is subject to abatement by the County. The owner of the fee title underlying the ROW is subject to the same general principles of trespass as is a member of the public. It is furthermore no less a trespass where the encroachment is on a portion of the ROW not used as a roadway.

Encroachments in a County highway system generally fall within the jurisdiction of the Department, as the Director of Public Works and Planning ("Director") serves as the ex officio County Road Commissioner. Under the Streets and Highways Code, the County Road Commissioner has authority to remove encroachments or order the removal.

## **Proposed Policy**

The proposed policy document is intended to address encroachments on a countywide basis. The proposed policy document balances the risk of forfeiture by the property owner with public safety and gives the adequate discretion to the Department to focus Department resources on the most serious encroachments.

The proposed policy document provides for a seven-step process that ensures property owners know what to expect from the County in the process of:

1. Identifying the encroachment,
2. Determining whether their encroachment poses an obstruction or safety hazard,
3. Determining whether the encroachment can be permitted,
4. Determining whether the encroachment can be licensed,
5. Determining whether the ROW can be vacated,
6. If necessary, removing the encroachment shifting costs of removal to property owner, and
7. Documenting the steps taken and resolution of the case.

The proposed policy document also delegates authority to the Director, or his/her designee to enter into a license agreement with the property owner should an encroachment permit not be appropriate. (See steps 3 and 4 of proposed policy document.) The Department developed the concept of a license agreement in consultation with County Counsel. The proposed policy document delegates authority to the Director, or his/her designee to approve the form of the license agreement, subject to the requirements and limitations contained in the proposed policy. Staff has attached a current draft of the license agreement template for your Board's information. (See Exhibit A.)

Step 6 of the proposed policy document vests authority in the Director to bring suit to recover the costs of removal of encroachments pursuant to the Streets and Highways Code. Steps 2 and 4 will require a fee to fully implement. Staff intends to return to your Board with proposed fees prior to the effective date of the policy document.

### ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A - Draft License Agreement  
Resolution

CAO ANALYST:

Debbie Paolinelli