

# MARIPOSA COUNTY

County Counsel • (209) 966-3222



## **ORDINANCE 2017-1127**

MEETING: August 15, 2017

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Ordinance Amending Chapters 2.36 and 12.04 of the Mariposa County Code

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### **RECOMMENDED ACTION AND JUSTIFICATION:**

Waive the Second Reading and Adopt an Ordinance Amending Chapters 2.36 and 12.04 of the Mariposa County Code abolishing the office of Road Commissioner, and transferring those duties to the newly created Job Classification of Director of Public Works and Transportation.

These amendments will abolish the office of the Road Commissioner and transfer those duties to the newly created Job Classification of Director of Public Works and Transportation and will also eliminate the Public Works Director Job Classification.

The Public Works Director and Roads Commissioner are currently separate positions within Mariposa County pursuant to the County Code. This separation has been helpful at times, but lately mostly challenging, as it required separate avenues to address overlapping administrative issues within the Public Works Department as the Road Commissioner does not report to the Public Works Director.

The proposed County Code amendments being contemplated will abolish the Road Commissioner title and duties and transfer all duties to the newly created Job Classification of Director of Public Works and Transportation. This will enable the Director to perform the duties that the Road Commissioner currently performs and to permit the County Engineer to perform any duties which require a Civil Engineer's license.

The merger of the two positions was thoughtfully considered with the intent to consolidate similar services to achieve greater efficiencies through streamlined work flows and coordinated, consistent communication. Efficiencies anticipated from the consolidation include: increased collaboration and coordination between staff, better standardized administrative processes, and greater flexibility to integrate cross functional, inter-disciplinary practices across greater areas.

This ordinance was introduced on July 25, 2017.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The most recent Board of Supervisor approved change to the Public Works Director Job Description occurred in September, 2011.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board may choose to take no action on this item, and not consolidate the office of the Director of Public Works and Roads Commissioner.

**ATTACHMENTS:**

**PWD Ord -2nd Reading (DOCX)**

**CAO RECOMMENDATION**

Requested Action Recommended

  
Dallin Kimble, County Administrative Officer 7/13/2017

**RESULT: ADOPTED [UNANIMOUS]**

**MOVER:** Merlin Jones, District II Supervisor

**SECONDER:** Miles Menetrey, District V Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

**MARIPOSA COUNTY ORDINANCE NO. 1127**

**AN ORDINANCE AMENDING CHAPTERS 2.36 AND 12.04 OF THE MARIPOSA COUNTY CODE**

**WHEREAS**, the Board of Supervisors desire to amend Chapters 2.36 and 12.04 of the Mariposa County Code, and

**WHEREAS**, these amendments will abolish the office of Road Commissioner and transfer those duties to the newly created Director of Public Works and Transportation, which replaces the position of Public Works Director,

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY**, a political subdivision of the State of California, does ordain as follows:

**SECTION I:** Chapter 2.36 of the Mariposa County Code is hereby amended to read as follows:

**2.36.010 Created.**

There is hereby created in the County of Mariposa the Department of Public Works. Director of Public Works and Transportation

**2.36.020 Director of Public Works and Transportation.**

This department shall be directed by a Director of Public Works and Transportation.

**2.36.030 Duties of Department and Director.**

A. The duties of the department and director shall be those designated by resolution of the Board of Supervisors.

**2.36.040 Director-Compensation.**

The compensation to be paid to the Director of Public Works and Transportation shall be set by resolution of the Board of Supervisors.

**2.36.050 Office of Road Commissioner Abolished.**

The office of Road Commissioner is abolished and the duties of that office are transferred to the Director of Public Works and Transportation. The Director of Public Works and Transportation shall not be required to have any special permit, registration, or license. Any civil engineering functions which are required to be performed by the Director of Public Works and Transportation shall be performed by a registered civil engineer acting under the authority of the Director.

**SECTION II:** Chapter 12.04 of the Mariposa County Code is hereby amended to read as follows:

**12.04.030 Closure of roads under construction or maintenance.**

All County roads either under construction or undergoing current maintenance work may be closed by order of the Director of Public Works and Transportation.

**12.04.040 Permit Required to Place Certain Structures on Roads.**

No person shall place in, under or over any portion of a County road any tower, pole, pole line, pipe, pipe line, fence, stand or building, or any structure or object of any kind or character not particularly mentioned herein, without first obtaining a written permit from the Director of Public Works and Transportation . The Director of Public Works and Transportation is granted the authority to establish reasonable standards of construction as a condition to the granting of a permit.

**12.04.080 Closing or Restricting the Use of County Highways.**

The Mariposa County Director of Public Works and Transportation, pursuant to Street and Highways Code Section 942.6, shall have the delegated powers contained in Streets and Highways Code Section 942.5 as follows:

A. The Mariposa County Director of Public Works and Transportation may restrict the use of, or close, any County highway whenever the Director of Public Works and Transportation 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;

B. No liability shall attach to the County, or to the Director of Public Works and Transportation , for the restriction of use, or closing, of any County highway for the public purposes set forth in subsection A of the section.

**12.04.090 Issuance of Permits; Authorized Acts.**

The Director of Public Works and Transportation may issue written permits, authorizing the permittee to do any of the following:

(a) Make an opening or excavation for any purpose in any County highway or public easement that has been accepted by the Board on behalf of the public.

(b) Place, change or renew an encroachment.

(c) Place or display in, under or over any County highway or public easement any kind of advertising sign or device. Any such sign or device placed or displayed contrary to the provisions of this section is a public nuisance and the Director of Public Works and Transportation may immediately remove it. The provisions of this section shall not prohibit the posting of any notice in the manner required by law or by the order of any court in this state.

(d) Plant, remove, cut down, injure or destroy any tree, shrub, plant or flower growing within any County highway or public easement.

Any person who does any of the acts specified in this section, without the authority of such permit, is guilty of a misdemeanor and is liable to the County for all expenses and damages caused thereby.

**12.04.091 Permit Provisions; Replacing Highway; Location and Manner or Work.**

Any permit issued under the provisions of this chapter may provide that the permittee will pay the entire expense of replacing the highway, or public easement that has been accepted by the Board on behalf of the public, in as good condition as before, and may provide such other conditions as to the location and the manner in which the work is to be done as the Director of Public Works and Transportation finds necessary for the protection of the highway/public easement.

**12.04.092 Permit Provisions; Relocation or Removal of Encroachments or**

**Facilities.**

Any permit issued to a public agency or a public utility having lawful authority to occupy the highways/public easements shall contain a provision that in the event the future improvement of the highway/public easement necessitates the relocation of such encroachment the permittee will relocate the same at its sole expense. In said event the **Director of Public Works and Transportation** shall serve on the permittee his written demand specifying the place of relocation, and specifying a reasonable time within which the work of relocation must be commenced. The permittee must commence such relocation within the time specified in said demand and thereafter diligently prosecute the same to completion.

All permits other than those issued to public agencies or a public utility having lawful authority to occupy the highways/public easements are revocable on five days' notice and the encroachment must be removed or relocated as may be specified by the **Director of Public Works and Transportation** in the notice revoking the permit and within a reasonable time specified by the **Director of Public Works and Transportation** unless the permit provides a specified time.

Public utilities may be required, within a reasonable time, to relocate such of their facilities as interfere with an enlarged public use of the highway, except in those cases where the enlarged use of the highway/public easement involves a state freeway.

**12.040.093 Supervision of Work; Costs.**

The **Director of Public Works and Transportation** may, but is not required to, supervise any work done under any permit issued under the provisions of this chapter, in which event the permittee shall pay the reasonable cost of such supervision to the **Director of Public Works and Transportation**, but no cost of supervision shall be charged by the **Director of Public Works and Transportation** to any public corporation, provided, however, this section shall not operate to prevent charges made pursuant to Government Code Section 6103.6.

(a) Permittees may excavate openings in County highways/public easements to make repairs in cases of emergency requiring immediate action. In such cases the appropriate representative of the **Director of Public Works and Transportation** shall be promptly notified of any such action, and such permittee, at his own expense, shall immediately replace such County highway/public easement in as good condition as before such excavation.

(b) A public agency supplying water service to its inhabitants may, within its corporate limits, excavate a County highway/public easement without a permit in cases of emergency requiring immediate action; but in such cases the County highway/public easement shall, at the expense of the public agency, be replaced in as good condition as before such excavation.

**12.040.094 Filing Bond with Director of Public Works and Transportation; Condition.**

The **Director of Public Works and Transportation** may require the applicant to file with the **Director of Public Works and Transportation** a satisfactory bond payable to the people of the County in such amount as the **Director of Public Works and Transportation** deems sufficient, conditioned on the proper compliance by the permittee with the provisions of this chapter.

**12.040.095 Public Agency or Utility Having Authority to Occupy Highways; Bond; Permit.**

Except as otherwise provided in this section, such a bond shall not be required of any public agency or public utility having lawful authority to occupy the highways/public easement which is authorized by law to establish or maintain any works or facilities in, under or over any public highway/public easement, nor shall the application of any such public agency or public utility for

a permit be denied.

The Director of Public Works and Transportation may require of any such applicant a bond in a sum not to exceed twenty thousand dollars (\$20,000), if such applicant has in fact prior to such application failed to comply with the provisions of this chapter or with the provisions of a previous permit.

**12.040.096 Blanket Permits.**

Any city, municipal utility district, municipal water district or public utility having lawful authority to occupy the highways is entitled to a blanket permit issued by the Director of Public Works and Transportation, renewable annually, for the installation of its service connections and for ordinary maintenance of its facilities located or installed in County highways/public easements; but the Director of Public Works and Transportation may revoke any such blanket permit if the permittee fails to comply with the provisions of this chapter. When any such permit is revoked in a proper case such municipal utility district, municipal water district or public utility is entitled to a permit only on furnishing a bond as provided in Section 12.040.093.

**12.040.101 Authority to Remove Encroachments.**

The Director of Public Works and Transportation may immediately remove, or by notice may require the removal of, any of the following encroachments:

(a) An encroachment which obstructs or prevents the use of a County highway/public easement by the public.

(b) An encroachment which consists of refuse.

(c) An encroachment which is a traffic hazard.

(d) An encroachment which is an advertising sign or device of any description, unless excepted by subdivision (c) of Section 1460 of the Streets and Highways Code of the State of California. The Director of Public Works and Transportation may return such sign or device to its owner, or otherwise dispose of it in his discretion, except that if the Director of Public Works and Transportation determines in good faith that the sign or other device is of more than nominal value he shall not effect such other disposition until he has made a reasonable attempt to identify and notify the owner of the sign or device and provided a reasonable time for the owner to retrieve it under provisions of this section. The return of such sign or device to its owner may be conditioned upon payment of an amount sufficient to reimburse the Director of Public Works and Transportation for the expense of removal. The Director of Public Works and Transportation may recover from the person causing any of the above encroachments, in an action brought in the name of the County for that purpose, the court costs of the Director of Public Works and Transportation, the expense of such removal, and any other damages caused by the encroachment.

**12.040.102 Notice to Remove Encroachment.**

The Director of Public Works and Transportation may, by notice, require the removal of any other encroachment not specified in Section 12.040.101 from any County highway/public easement.

**12.040.103 Service of Notice; Contents.**

The notice referred to in Sections 12.040.101 and 12.040.102 shall be served upon the occupant or owner of the land, or the person causing, controlling or owning the encroachment, or shall be left at the place of residence of such occupant, owner or person if he resides in the County and is known to the person giving such notice. If the person upon whom notice is to be

served does not reside in the County, the notice shall be posted on the encroachment. The notice shall specify the breadth of the highway/public easement, the place and extent of the encroachment, and shall require the removal of such encroachment within 10 days.

**12.040.104 Penalty for Noncompliance; Summary Removal.**

If the encroachment is not removed, or its removal not commenced and diligently prosecuted, prior to the expiration of 10 days from and after the service or posting of the notice, the person causing, owning, or controlling the encroachment forfeits three hundred fifty dollars (\$350) for each day the encroachment continues unremoved. The Director of Public Works and Transportation shall immediately remove an encroachment that effectually obstructs and prevents the use of the highway/public easement by vehicles.


**12.040.105 Action for Abatement of Encroachment; Penalty.**

If the encroachment is denied, and the owner or occupant of the land, or the person causing, owning or controlling the alleged encroachment refuses either to remove it or permit its removal, the Director of Public Works and Transportation shall commence, in a court of competent jurisdiction, an action in the name of the County to abate the encroachment as a nuisance. If the commissioner recovers judgment he or she may, in addition to having the nuisance abated, recover a penalty of three hundred fifty dollars (\$350) for each day the nuisance remains after service or posting of notice, and also the costs in the action, as provided in Section 12.040.104.

**SECTION III:** This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code §25123.

**PASSED AND ADOPTED** by the Board of Supervisors of Mariposa County this 25th day of July, 2017 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY  
NOES: NONE  
ABSENT: NONE  
ABSTAINED: NONE

  
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**MARSHALL LONG**, Chairman  
Mariposa County Board of Supervisors

**ATTEST:**

  
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**RENE LAROCHE**  
Clerk of the Board

**APPROVED AS TO FORM:**

  
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**STEVEN W. DAHLEM**  
County Counsel