

**YAVAPAI COUNTY BOARD OF SUPERVISORS
ORDINANCE NO. 2020-5**

**REGULATING OBSTRUCTIONS, EXCAVATION,
ENCROACHMENTS, AND USE OF PUBLICLY
MAINTAINED ROADS/RIGHTS OF WAY**

WHEREAS, publicly maintained roads/rights of way within the unincorporated limits of Yavapai County are used for purposes other than public ingress and egress; and

WHEREAS, Yavapai County can impose restrictions and limitations on the use of publicly maintained roads pursuant to A.R.S. §§ 11-251(4), 28-7054 and 40-283(B) to protect the public safety and welfare;

NOW, THEREFORE, it is ordered by the Yavapai County Board of Supervisors as follows:

A. DEFINITIONS

1. "Publicly maintained road" means the entire width of the right-of-way for any road under the exclusive control of the Yavapai County Board of Supervisors, whether held by deed, easement, dedication, or other claim of right, including bridges, and which have been included in the County road maintenance system.

2. "Encroachment" shall include, but is not limited to, any of the following whether temporary or permanent, unless expressly authorized by law: an obstruction, sign, landscaping, vegetation, mailbox structure, light fixture, new driveway or other road connection, diversion of waters, drainage facility, excavation whether or not conducted under a valid franchise or license, recognized utility installation, culvert installations whether new or replacement, or any other construction.

3. "Roadway prism" shall include the traveled road surface, shoulders and ditches.

B. GENERAL PROVISIONS

1. No encroachment within a publicly maintained road is allowed without a written permit from the County Engineer, except by authorized County employees, contractors acting under a County contract, and new subdivision improvements for which Yavapai County holds financial assurances. No permittee shall violate the terms and conditions of a permit without written authorization from the County Engineer.

2. No vehicle shall be operated on, nor or any other activity conducted on, any concrete or asphaltic concrete surface in a fashion which damages the road surface or base without a permit from the County Engineer unless the use is specifically authorized by law.

3. No vehicle in excess of Arizona Department of Transportation ("ADOT") limits for weight, length, width and height shall travel on a public road without a permit from ADOT No vehicle in excess of a County weight limit shall travel on a publicly maintained road without a permit from the County Engineer.

4. The County Engineer shall prepare application and permit forms detailing the specifications, conditions and restrictions under which an encroachment is allowed.

5. Any permit issued pursuant to this ordinance may be revoked at any time at the sole discretion of the County Engineer if the County Engineer determines revocation is necessary to protect the public safety, allow for right of way maintenance, or to allow for road construction and expansion. In the event of such revocation the previously permitted encroachment shall be removed in a reasonable time specified by the County Engineer.

6. The County Engineer is authorized and directed to charge a permit fee in an amount authorized by the Board of Supervisors. The fee shall be specified on the permit.

7. Emergency encroachments, including excavation for public utility repairs necessary to protect the public safety, are allowed without a permit provided the County Engineer is notified by phone within 24 hours of the emergency, a permit is applied for the next business day, all necessary traffic control and safety devices are used, and the final road repairs are not performed until authorized by the County Engineer.

8. In the event an obstruction or encroachment of a publicly maintained road occurs without a permit so as to cause an immediate public hazard, the County may remove the obstruction or encroachment and seek reimbursements of the costs involved from the responsible party. In all other cases, the provisions of A.R.S. §28-7054 apply.

C. SPECIAL PROVISIONS RELATING TO EXCAVATION AND CONSTRUCTION

1. The County Engineer shall prepare specifications and conditions to be included in publicly maintained road encroachment, excavation, and construction permits. The specifications and conditions shall include, but not be limited to the following:

- a. Traffic control including signs specified in the Manual on Uniform Traffic Control Devices (MUTCD) and the latest revisions thereof.
- b. Procedures for repairing road cuts.
- c. A requirement for 95% backfill compaction within the roadway prism.
- d. A provision prohibiting pavement cuts for a period of five (5) years after completion or reconstruction of the pavement, except for emergency utility repairs that could threaten the structural integrity of the road prism.
- e. A requirement that any repair shall restore the road to the same or better condition.

2. A permit to excavate or construct shall be valid for 30 days from the date it is issued. Permittees shall notify the Public Works Department 24 hours prior to commencing work and no later than the next business day after completion. A copy of the permit shall be available at the location of the work, and shall be made available to the Public Works inspector upon request.

D. SPECIAL PROVISIONS RELATING TO UTILITIES

1. All utilities must be installed a minimum of 36 inches from the lowest adjacent area, below the finished surface. In the event there are special public safety concerns in the opinion of the County Engineer, three-dimensional, as-built drawings may be required upon completion of construction. Yavapai County shall not be liable for damage caused to utilities placed within a publicly maintained road or associated right of way without a valid right of way permit approved by the County Engineer or his representative.

2. In the event a public utility line within the roadway prism becomes exposed or prevents roadway maintenance, the County Engineer may require that the line be lowered or relocated without expense to the County.

3. Pursuant to A.R.S. §40-283(8) the requirements in this Ordinance supersede the provisions of any utility franchise.

E. VARIANCES

The County Engineer is authorized to grant variances from the restrictions and conditions specified herein provided the public safety and welfare is protected.

F. REMEDIES

1. In the event the conditions of a permit are violated or a permit is not obtained, the County Engineer may suspend the permit, if any, and order that all work cease until the violation is corrected or a permit obtained. If the work is abandoned and not repaired to County specifications, the County may repair the work and recover the costs of repair from the person responsible.

2. Any person commencing work without a permit shall be required to obtain a permit and shall pay twice the usual permit fee.

G. REPEALER

This Ordinance repeals Ordinance 2001-1 and any portion of any resolution, rule or regulation conflicting with this Ordinance.

H. PENALTIES

Any person who is convicted of a violation of this Ordinance is guilty of a class I misdemeanor.

I. EFFECTIVE DATE

This Ordinance shall be effective on January 15th, 2021.

PASSED AND ADOPTED BY THE YAVAPAI COUNTY BOARD OF SUPERVISORS this
16th day of December 2020.

/s/ Craig L. Brown
Craig L. Brown, Chairman
Yavapai County Board of Supervisors

ATTEST:

/s/ Kim Kapin
Kim Kapin, Clerk of the Board
Yavapai County Board of Supervisors

APPROVED AS TO FORM:

/s/ Martin Brennan
Martin Brennan, Deputy County Attorney