

**ORDINANCE NO. 982**

**AN ORDINANCE OF THE TOWN OF CORTE MADERA AMENDING TITLE 12  
CHAPTER 12.38 OF THE CORTE MADERA MUNICIPAL CODE, "USE OF PUBLIC  
RIGHT OF WAY"**

**WHEREAS**, the Town of Corte Madera's public rights-of-way are unique public resource held in trust by the town for the benefit of the public. These physically limited resources require proper management by the town to maximize their efficiency and minimize the costs to the taxpayers, including costs associated with damages caused by private individuals or corporations granted authority to utilize public rights-of-way; and

**WHEREAS**, the Town of Corte Madera desires to enable the town to treat similarly persons who are making a similar use of the town's public rights-of-way, as may be appropriate to comply with applicable law; and

**WHEREAS**, the Town of Corte Madera seeks to strengthen existing provisions within the Town's Municipal Code related to the above purposes and seeks to streamline the manner in which right-of-way agreements are reviewed and decided upon in order to comply with federal laws

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA**  
does ordain as follows:

Section 1. Title 12, Chapter 12.38, "Use of Public Right of Way" of the Corte Madera Municipal Code is amended added to read as follows:

**TITLE 12 STREETS AND SIDEWALKS**

**Chapter 12.38 - USE OF PUBLIC RIGHT-OF-WAY**

**Sections:**

**12.38.010 - Purpose—Authority.**

- (a) The public rights-of-way are unique public resources held in trust by the town for the benefit of the public. These physically limited resources require proper management by the town to maximize their efficiency and minimize the costs to the taxpayers, to protect against foreclosure of future economic expansion because of premature exhaustion of the public rights-of-way, and to minimize the inconvenience to and negative effects on the public from private uses of the public rights-of-way.
- (b) Under applicable state and federal law, the town is empowered to control access to and use of its public rights-of-way, and to obtain reasonable and fair compensation for its use.
- (c) The purpose of this chapter is to serve and further the purposes identified above and to enable the town to treat similarly persons who are making a similar use of the town's public rights-of-way, as may be appropriate to comply with applicable law.

(Ord. 861 § 1 (part), 2001)

**12.38.020 - Definitions.**

For purposes of carrying out the intent of this chapter, the following words, phrases, and terms shall have the meanings set forth in this chapter unless a different meaning is clearly intended by the use and context of the word, phrase or term:

(1) "Applicant" means a "Person" as defined below in 12.38.020(5) who submits an application.

(12) "Director" means the director of public works of the town or his or her designee.

(23) "Facility" means any fiber optic, coaxial, or copper cable, telephone, telecommunications, electric or other wire or line, oil, gas, or other pipeline, duct, conduit, cabinet, tunnel, vault, equipment, drain, manhole, splice box, surface location, marker, pole structure, utility, or other appurtenance, structure, property, or tangible thing owned, leased, operated, or licensed by a person and located or proposed to be located in, upon, above, beneath, or across any public right-of-way.

(34) "Licensee" means an owner or operator of the facility person with whom the town has executed a right-of-way agreement under this chapter or any lawful successor, transferee, or assignee of such person.

(45) "Right-of-way agreement" means the authorization granted by the town to a person under this chapter giving the person a nonexclusive right to occupy certain space in, upon, above, beneath, or across any public right-of-way for the purpose of providing a specified service.

(56) "Person" means any person, business, firm, corporation, or other legal entity who places, constructs, owns, controls, operates, manages, or uses any facility in, upon, above, beneath, or across any public right-of-way. For the purposes of this chapter, person does not include any local agency as defined by Government Code Section 54980.

(67) "Public right-of-way" means the area in, upon, above, beneath, or across any public street, road, lane, court, alley, boulevard, sidewalk, median, parkway, or easement for vehicular travel within the town. "Public right-of-way" does not include any trail, pathway or lane used exclusively for pedestrian or bicycle use.

(78) "Standard specifications" means the then current version of the standard specifications, standard drawings, and uniform construction standards adopted by resolution of the town council.

(Ord. 861 § 1 (part), 2001)

#### 12.38.030 - Agreement required.

No person shall place, construct, own, control, operate, manage, or use any facility in, upon, above, beneath, or across any public right-of-way without first obtaining a right-of-way agreement from the town for such purpose. The execution of a right-of-way agreement shall not diminish, abrogate, or otherwise affect a licensee's obligation to comply with any other applicable provision of this code or other town ordinances or regulations, or state or federal law, including, but not limited to, the following:

- (1) Any permit or authorization required for the privilege of transacting business within the town as required by the code or ordinances of the town;
- (2) Any permit, agreement, or authorization required in connection with activities in, upon, above, beneath, or across the public right-of-way, including by way of example but not limitation, street work, street excavation, use, removal and relocation of property within a street, or other street work;
- (3) Any permits or agreements for occupying any other property of the town to which access is not specifically granted by the right-of-way agreement including, without limitation, permits and licenses for placing devices on or in poles, conduits, or other structures or facilities owned by the town or other governmental entities.

(Ord. 861 § 1 (part), 2001)

#### 12.38.040 - Exemptions—Existing agreements.

The right-of-way agreement requirement imposed by Section 12.38.030 shall not apply to the following persons or facilities:

- (1) Any person who is a party to an existing agreement or franchise with the town that

authorizes the use of the public right-of-way, and which agreement or franchise is in full force and effect on the effective date of the ordinance codified in this chapter, shall not be subject to Section 12.38.030 until such time as the existing agreement or franchise expires or is terminated. If an existing agreement or franchise for use of the public right-of-way contains within it a provision for the renewal or extension of the agreement or franchise, then the renewal or extension shall be negotiated and executed pursuant to the terms of this chapter;

- (2) Any persons proposing to place, construct, own, control, operate, manage, or use a facility in the public right-of-way shall not be subject to Section 12.38.030 if the director determines in writing that the facility (a) is an insignificant impact or encroachment on, or use of the public right-of-way, and (b) does not inconvenience or jeopardize the public's continued use of the public right-of-way;
- (3) Facilities temporarily placed in the public right-of-way for a period not to exceed one year, when such facilities have been otherwise approved by the director;
- (4) Any person who is a party to an existing cable television franchise agreement with the town or an existing cable television or telecommunications franchise agreement with the Marin telecommunications agency;
- (5) Any person or facility exempted by this section from the right-of-way agreement requirement, nonetheless shall obtain any and all encroachment, excavation or other permits required by this code before commencing any work within a public right-of-way.

(Ord. 861 § 1 (part), 2001)

#### 12.38.050 - Application.

Application for a right-of-way agreement shall be in writing, shall be filed with the director, and shall contain the following information:

- (1) The name, mailing and email address, telephone number, and facsimile number of the applicant and authorization from the owner or operator of the facility, as defined in Section 12.38.020(3), if different from the applicant;
- (2) A detailed statement and description of the facilities proposed to be placed, constructed, owned, controlled, operated, managed, or used by the applicant; the proposed location of the facilities; the manner in which the applicant proposes to place, construct, own, control, operate, manage, or use the facilities; the services provided by the facilities and the extent and manner in which existing or future poles or other facilities of other persons will be used;
- (3) A detailed description and location map of the public rights-of-way or other public places within which the applicant proposes or seeks authority to place, construct, own, control, operate, manage, or use any facility; a detailed description and location map of the facilities to be installed in the public right-of way and any adjacent public or private facilities, or property; a detailed description of the proposed traffic control plans and street repairs; and a construction schedule;
- (4) If the applicant is a private entity, the applicant's most recent corporate financial statements demonstrating the applicant's financial ability to complete the construction, operation, and maintenance of the proposed facilities;
- (5) Copies of all licenses, permits, franchises, or other written authorizations received by the applicant from the Federal Communications Commission, the California Public Utilities Commission, or any other federal or state regulatory commission or agency having jurisdiction concerning any matters affecting the applicant's activities or facilities under the proposed right-of-way agreement;
- (6) The town may, at any time demand, and applicant shall provide within the time required supplementary, additional or other information as the town council or the director may deem reasonably necessary to determine whether the requested right-of-way agreement should be granted. Such information may include the completion of a standard questionnaire for right-of-way users.

(Ord. 861 § 1 (part), 2001)

#### 12.38.060 - Application—Fee.

Each application for a right-of way agreement shall be accompanied by payment to the town of an application fee in an amount determined by the town necessary to pay all estimated expenses incurred by the town in connection with the processing of such application and the execution of a right-of-way agreement, including any expenses incurred by the town for outside technical or legal services to review such application or agreement. In the event the town subsequently determines the initial application fee is insufficient to pay for all expenses, it may require the applicant to pay an additional application fee in an amount sufficient to cover the additional estimated expenses. No portion of the application fee shall be considered a tax, compensation or revenue due to the town under this chapter or code, or any other local, state or federal law for use of the public right-of-way.

(Ord. 861 § 1 (part), 2001)

#### 12.38.070 - Approval and execution of agreement.

- (a) Upon receipt of an application for a right-of-way agreement which is determined to be complete by the director, the town ~~council~~ manager, or his/her designee, shall consider the application and may, ~~by resolution or ordinance~~, grant or deny the requested right-of-way agreement. If the right-of-way agreement is granted, the application submitted shall constitute and form part of the right-of-way agreement as executed to the extent not inconsistent therewith. If the application is denied, the ~~resolution~~ town manager's determination, or the determination of his/her designee, shall include the reasons for denial. The decision of the town ~~council~~ manager, or his/her designee, shall be final.
- (b) In considering whether to grant or deny a requested right-of-way agreement, the town ~~council~~ manager, or his/her designee, shall apply the following criteria:
- (1) The applicant's ability to install and maintain the facilities described in the application;
  - (2) The capacity of the public rights-of-way identified in the application to accommodate the applicant's proposed facilities and any foreseeable additional facilities of the applicant or other licensees which may need to be accommodated;
  - (3) The town's future plans for the affected public rights-of-way;
  - (4) The damage or disruption, if any, of public or private facilities, improvements, service, travel, or landscaping by the proposed use or its proposed location;
  - (5) The availability of existing or future alternative routes or locations for the applicant's proposed facilities;
  - (6) Any licenses, permits, or franchises received by the applicant from the Federal Communications Commission, the California Public Utilities Commission, or any other federal or state regulatory commission or agency having jurisdiction concerning any matters affecting the applicant's proposed activities or facilities;
  - (7) Any other factor or circumstance deemed relevant for protecting the health and safety of the town and the public.
- (c) If the right-of-way agreement is approved, the right-of-way agreement shall not be effective unless and until the town and the licensee who is the owner or operator of the facility have executed a written right-of-way agreement that contains, at a minimum, the following:
- (1) The purpose, nature and specific uses of the facilities to be installed in the public right-of-way pursuant to the right-of-way agreement;
  - (2) The right of the town to audit the licensee to ensure such purposes and uses have not been violated;
  - (3) The terms and conditions for licensee's use of the public right-of way, including all conditions imposed by the town council in its approval of the right-of-way agreement;
  - (4) The right-of-way usage fee, if any, or the methodology for determining the fee to be paid to the town by licensee pursuant to Section 12.38.100. The town may refuse to enter into a license agreement with any proposed licensee who fails to agree to pay the right-of-way usage fee established by the town;
  - (5) Incorporation of the provisions of this chapter;

- (6) Any other provision determined to be necessary or prudent by the town.
- (d) The approval and execution of a right-of way agreement shall not exempt the licensee from obtaining any encroachment or excavation permits required by Chapter 12.08 of this code. No work shall be performed by any licensee in the public right-of-way before all required encroachment and excavation permits are granted or issued for the work.

(Ord. 861 § 1 (part), 2001)

#### 12.38.080 - Term of agreement.

A right-of-way agreement executed under this chapter shall be valid for the period of time stated in the agreement.

(Ord. 861 § 1 (part), 2001)

#### 12.38.090 - Amendment—Application and determination.

A licensee may apply to amend its right-of-way agreement to revise the right-of-way within which the licensee proposes to place, construct, own, control, operate, manage, or use its facilities, as long as the type of facilities and the use of such facilities is already authorized by the licensee's existing right-of-way agreement. The amendment application shall contain the information required under Section 12.38.050, and shall be accompanied by the application fee specified in Section 12.38.060. Upon receipt of a completed amendment application, the town council shall, by resolution or ordinance, approve or deny the amendment application in whole, in part, or with additional conditions, applying the following criteria:

- (1) The criteria set forth in Section 12.38.070;
- (2) The applicant's history and current compliance with any applicable right-of-way agreement, this chapter, or any other applicable local, state or federal law, regulation, or policy;
- (3) The capacity of the streets, alleys, or other public rights-of-way identified in the amendment application to accommodate the applicant's facilities and uses of the public right-of-way.

(Ord. 861 § 1 (part), 2001)

#### 12.38.100 - Renewal—Application and determination.

A licensee that desires to renew its right-of-way agreement may file an application with the town for renewal, not more than one year nor less than one hundred and eighty days before expiration of its current right-of-way agreement. The renewal application shall contain the information required under Section 12.38.050, and shall be accompanied by the application fee specified in Section 12.38.060. Upon receipt of a completed renewal application, the town council shall, by resolution or ordinance, grant or deny the renewal application in whole, in part, or with additional conditions, applying the following criteria:

- (1) The criteria set forth in Section 12.38.070;
- (2) The applicant's history and current compliance with any applicable right-of-way agreement, this chapter, or any other applicable local, state or federal law, regulation, or policy;
- (3) The continuing capacity of the streets, alleys, or other public rights-of-way identified in the renewal application to accommodate the applicant's facilities and uses of the public right-of-way.

(Ord. 861 § 1 (part), 2001)

#### 12.38.110 - Right-of-way usage fee.

Each right-of-way agreement granted under this chapter is subject to the town's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid by licensee for the rights

granted in the right-of-way agreement. The right-of-way agreement shall specify the amount of compensation to be paid by the licensee for the use of the town's right-of-way and the other privileges granted by the agreement. Compensation may be in the form of cash payments, in-kind contributions or other benefits of value paid or provided to the town by the licensee or any combination of the foregoing. This section shall not apply to right-of-way agreements approved and executed for right-of-way uses governed by the Broughton Act (Cal. Pub. Util. Code Section 6001 et seq.), the Franchise Act of 1937 (Cal. Pub. Util. Code Section 6201 et seq.), Section 7901 of the Public Utilities Code, or Section 10101 of the Public Utilities Code.

(Ord. 861 § 1 (part), 2001)

#### 12.38.120 - Security.

- (a) Licensee shall, prior to the issuance of any permit for construction in the public right-of-way, deliver to the town satisfactory security in the amount of one hundred and ten percent of the total estimated cost of all work to be performed under such permit, as determined by the director. Such security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the director. The security shall be provided in the manner required by the director and maintained in full force and effect until the permitted work in the public right-of-way is completed to the satisfaction of the director, at which time the amount of the security shall be reduced to ten percent of the actual cost of the work. The reduced security shall be maintained by licensee for a period of one year as a guarantee that the work is of good quality and free from any defective or faulty material or workmanship. Any surety supplying a performance bond must be an "admitted surety insurer," as defined in Section 995.120 of the Code of Civil Procedure, authorized to do business in the state. Return of the security shall be conditioned upon licensee's faithful performance of all work in the public right-of-way specified in the applicable permit. In the event licensee fails to comply with any provisions of this chapter related to such work, or any provision of any applicable right-of-way agreement or permit, or other approval related to such work, any damages or loss suffered by the town as a result thereof shall be recoverable from the security, including but not limited to the full amount of any compensation, indemnification, cost of removal, or abandonment of any property of licensee, plus reasonable attorneys' fees and costs up to the full amount of the security.
- (b) Neither the provisions of this section nor any damages recovered by the town hereunder shall be construed to excuse licensee's faithful performance of any right-of-way agreement or limit the liability or damages of licensee under this chapter, either to the full amount of the security or otherwise. In addition to its rights to take action under the security, the town may pursue any other remedy provided by law.

(Ord. 861 § 1 (part), 2001)

#### 12.38.130 - Use of facilities—Change in use.

Licensee's facilities shall be placed, constructed, owned, controlled, operated, managed, and used solely and exclusively for the purposes and uses expressly set forth in licensee's right-of-way agreement. Licensee shall not in any way use, or authorize or allow another person to use, any facility subject to licensee's right-of-way agreement for any purpose or use other than the purposes and uses expressly set forth in the right-of-way agreement.

(Ord. 861 § 1 (part), 2001)

#### 12.38.140 - Transfer of agreement or facilities.

The execution of a right-of-way agreement is a privilege to be held personally by licensee. Subject to applicable law, no right-of-way agreement or any facility permitted thereunder shall be sold, leased, licensed, assigned, disposed of, or otherwise transferred, in whole or in part, either by involuntary or voluntary sale, merger, consolidation, stock transfer, transfer in trust, or otherwise, without the prior written consent of the town, and then only under such conditions as may be prescribed by the agreement. A sale or transfer of stock, assets, or other equitable interests of licensee, or any parent, subsidiary, or other affiliate of licensee, which effects a material change in

licensee's ownership or control, as determined by the town, shall be deemed to be a transfer for purposes of this section. Any transfer shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed in the office of the town clerk within thirty days after any such transfer or assignment. The consent of the town council to a transfer may not be unreasonably denied. Any proposed transferee must show that it has the financial, technical and legal ability to perform all obligations and requirements of the right-of-way agreement and this chapter as determined by the town council and must agree in writing to comply with all provisions of the right-of-way agreement and this chapter. No consent by the town shall be required for a transfer in trust, mortgage or other hypothecation, in whole or in part, to secure any indebtedness.

(Ord. 861 § 1 (part), 2001)

12.38.150 - Nonexclusive use—Limitations.

- (a) Any right-of-way agreement shall be for the nonexclusive use of the public rights-of-way. By executing a right-of-way agreement, the town does not agree to restrict the number of right-of-way agreements to be executed that cover all or any part of the town for any person in the same business, a related business, or a competing business as the licensee.
- (b) A right-of-way agreement only authorizes licensee to use the public right-of-way specifically described in one or more encroachment permits issued by the town, and the use of any other public property, whether located within or outside a public right-of-way, is strictly prohibited unless authorized by a separate agreement with the town.
- (c) No reference herein, nor in any right-of-way agreement, shall be deemed to be a representation or guarantee by the town that its interest or other right to control the use of the property that is the subject of a right-of-way agreement is sufficient to permit its use for the purposes specified in the agreement. Any right-of-way agreement shall be deemed to grant no more than the rights which the town may have the authority to grant.
- (d) Any privilege claimed by licensee in any public right-of-way shall be subordinate to any prior lawful occupancy or use of the public right-of-way.
- (e) Licensee shall have no recourse whatsoever against the town for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or of any right-of-way agreement executed under this chapter or because of its enforcement.

(Ord. 861 § 1 (part), 2001)

12.38.160 - Facilities—Installation.

- (a) Conformance with Applicable Law. No person shall place, construct, own, control, operate, manage, or use any facility in, upon, above, beneath, or across any public right-of-way without first obtaining all necessary or required permits, agreements, or approvals from the town and all other governmental entities with jurisdiction over the facility or public right-of-way. All facilities shall be placed, installed or constructed and the right-of-way restored in accordance with the standard specifications adopted by resolution of the town council and any applicable special conditions or provisions imposed by the town council or director. All facilities shall be maintained in compliance with such permits, agreements, or approvals, and all applicable statutes, ordinances, rules, regulations, orders, and decisions issued by any federal, state, or local governmental body, agency, or court.
- (b) Time, Place and Manner. All facilities shall be located, constructed, operated, and maintained in the time, place and manner that causes the least interference with the public's use of the public right-of-way, and the rights or reasonable convenience of property owners who adjoin the public rights-of-way, all as determined by and approved by the director.
- (c) Key Map and Detailed Improvement Plan. Every person subject to this chapter shall cause a key map and detailed improvement plan to be prepared and filed with the director for review as part of its application for an encroachment permit which show all facilities to be located in the public rights-of-way, including the material of construction and horizontal and vertical locations with respect to the property lines and grade lines, existing utilities and all other

pertinent facilities and information required by the director. The key map and detailed improvement plan shall be prepared by a California registered professional civil engineer. Revisions shall be made to reflect comments of the director prior to the issuance of any encroachment permit. Prior to requesting the issuance of an encroachment permit for installation of any facility, the key map and detailed improvement plan shall be filed by the applicant with any other entity that owns, operates, or manages facilities in the affected right-of-way, so that such entities may advise the director as to any location, operation, or compatibility problems created by the applicant's proposed use of the right-of-way.

- (d) Disclosure. Upon the request of any person who has contracted to perform work on a public right-of-way, persons subject to this chapter shall provide accurate detailed information regarding the location of their existing and proposed facilities in the public right-of-way.
- (e) Undergrounding. In those areas and portions of the town where the transmission or distribution facilities of any person providing telephone service, cable service, or electric service are underground, all other facilities shall be constructed, operated, and maintained underground. In the event any town undergrounding project includes a licensee's facilities, the licensee shall underground such facilities at its expense.
- (f) Pole Attachments. Where existing poles or other wire-holding structures are available for use, the town council may require such poles and structures to be used if the council determines that the public convenience would be enhanced by such installation, and the terms of the use are just and reasonable.
- (g) Aboveground Installations. Installations of any aboveground equipment pursuant to a right-of-way agreement entered into pursuant to this chapter, such as amplifiers and cabinet boxes, shall be subject to the prior approval of the director.

(Ord. 861 § 1 (part), 2001)

#### 12.38.170 - Facilities—Relocation—Removal.

Every person subject to this chapter shall, at its expense, protect, support, temporarily disconnect, relocate or remove from any public right-of-way, any facility owned, operated or maintained by such person when required by the director by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any other public use of the public right-of-way.

(Ord. 861 § 1 (part), 2001)

#### 12.38.180 - Facilities—Abandonment—Removal.

- (a) Notice of Removal. In the event the use of any facility is discontinued for any reason for a continuous period of six months, or in the event any facility has been installed in any public right-of-way without complying with the requirements of this chapter, or in the event the required right-of-way agreement is terminated or expires, the licensee of each facility shall promptly, upon being given prior written notice, remove from the public right-of-way all such facilities within the time period specified by the notice, other than any facilities which the Director permits to be abandoned in place. In the event of such removal, the area from which such facility has been removed shall be promptly restored pursuant to an encroachment permit granted by the director and in conformance with the standard specifications and any applicable special conditions or provisions.
- (b) Abandonment. Any facility remaining in place one hundred and twenty days after the delivery of the notice set forth in this section shall be considered permanently abandoned. The director may extend such time as may be necessary under the circumstances. Any facility abandoned in place in the public right-of-way shall be abandoned in such manner as the director shall prescribe. Upon permanent abandonment, the facility shall become that of the town and the licensee of such facility shall submit to the director an instrument in writing, to be approved by the town attorney, transferring ownership of the facility to the town. Instead of accepting a facility as being abandoned pursuant to this subsection (b), the town in its sole discretion may remove the facility at licensee's sole expense, and licensee shall promptly

reimburse the town for the costs of such removal within thirty days after receiving an invoice from the town.

(Ord. 861 § 1 (part), 2001)

12.38.190 - Damage to facilities and public property.

- (a) The town, its elected officials, officers, employees, and agents shall not be liable for any damage to or loss of any facility placed in, upon, above, beneath, or across a public right-of-way unless such damage or loss is caused by the sole negligence or ~~wilful~~ willful misconduct of the town.
- (b) Any damage done directly or indirectly to any public right-of-way or other public property or improvement, by any person subject to this chapter, shall be promptly repaired, at the person's sole cost and expense, to the complete satisfaction of the town. Alternatively, the town may, in its sole discretion, choose to perform the repair work itself, in which case the responsible person shall reimburse the town for the full costs of the repair work within thirty days after receiving an invoice from the town.

(Ord. 861 § 1 (part), 2001)

12.38.200 - Indemnification.

Every person, including but not limited to licensee, subject to this chapter shall indemnify, defend and hold harmless the town, its officials, agents, employees and volunteers against any and all liabilities, losses, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, including but not limited to attorney's and expert fees and court costs, arising out of or connected with the performance of a right-of-way agreement, the installation and maintenance of any facilities or the use of any public right-of-way by licensee or licensee's employees, officers, officials, agents, transferees, contractors or subcontractors. This indemnification shall not apply to any liabilities, losses, claims, actions, causes of action or demands arising from town's sole negligence, ~~wilful~~ willful misconduct or criminal acts.

(Ord. 861 § 1 (part), 2001)

12.38.210 - Insurance.

Every person, including but not limited to licensee, subject to this chapter shall procure and maintain a policy of general liability insurance to insure such person and the town against all liability for personal injury, including accidental death, as well as claims for property damage which may arise from or which concern the activities of the person or the existence of the person's facilities in the public right-of-way. The amount of such insurance and any other insurance requirements shall be as provided in the right-of-way agreement.

(Ord. 861 § 1 (part), 2001)

12.38.220 - Timing of installations—Special right-of-way restoration standards.

- (a) No excavation shall be permitted in any public right-of-way that was constructed or resurfaced during the five-year period prior to the proposed excavation. This prohibition shall not apply to emergency excavations approved by the director. A proposed excavation shall be considered an emergency if it is necessary to repair or replace underground facilities in order to prevent a disruption of services to customers or prevent injury or damage to life or property. This prohibition also shall not apply to excavations required to provide essential utility services to a property where there are no other reasonable means of providing such services to the property or where the work is mandated by state or federal laws or orders and the excavation cannot be reasonably avoided as determined in both events by the director. In the event of an excavation permitted by this subsection (a), the affected right-of-way shall be

restored in accordance with the right-of-way restoration standards approved by the town.

- (b) The special right-of-way restoration standards described in subsection (a) above also shall apply to the excavation of right-of-way that has been constructed or resurfaced more than five years before the proposed excavation, provided that the right-of-way has a pavement condition index of sixty or higher as described in the town's pavement management program.
- (c) On an annual basis, the town and each utility or other user of the public rights-of-way shall coordinate their current year and to the extent practicable their five-year capital improvement programs for public right-of-way installations in order to reduce the number of excavations that occur. Such coordination shall occur annually at the time and in the manner specified by the director. The director may submit an annual report to the town council on the results of this coordination process. This report may include recommendations on the timing of town right-of-way projects to accommodate street projects planned by utilities or other users of the public rights-of-way.
- (d) Unless the right-of-way agreement prescribes a different time period, prior to submitting an application for a right-of-way agreement, the applicant shall notify in writing, on a form approved by the town, other existing or potential right-of-way users who are shown on the list of users maintained by the town. The notice shall describe the work to be performed, the specific rights-of-way that will be used, and the time when such work will be performed. All persons receiving such notice shall have thirty days from the date thereof to inform in writing the town and applicant sending the notice that such person desires to perform work jointly with the applicant. All work jointly performed by other persons shall be performed pursuant to right-of-way agreements and all required encroachment and excavation permits. The failure to timely respond to the notice and timely obtain the necessary right-of-way agreement and permits shall result in the person receiving the notice being prohibited from working in the designated right-of-way for a period of one year from the date that the work described in the notice is completed.

(Ord. 861 § 1 (part), 2001)

#### 12.38.230 - Violations—Penalties—Remedies.

- (a) Criminal Penalties. Any person who violates any provision of this chapter shall be guilty of a misdemeanor, unless the violation is charged as an infraction.
- (b) Termination. If a licensee breaches a right-of-way agreement, the town may, following reasonable notice, an opportunity to cure, and a hearing, terminate the right-of-way agreement or reduce the term of the agreement.
- (c) Cumulative Remedies. The remedies under this section are nonexclusive and cumulative, and shall be in addition to any other remedy the town may have at law.

(Ord. 861 § 1 (part), 2001)

#### 12.38.240 - Rights reserved to the town.

- (a) Nothing in this chapter shall contract away, modify, abridge, impair, or affect, in any way, to any extent, the right of the town to acquire any facility located in the public right-of-way through the exercise of the right of eminent domain.
- (b) There is reserved to the town every right and power which the town has under any local, state or federal law, and every person subject to this chapter, by its use of the public right-of-way, agrees to comply with any actions or requirements of the town in its exercise of such rights or powers.
- (c) Neither the execution of a right-of-way agreement nor any provisions of this chapter shall constitute a waiver or bar the exercise of any governmental right or power of the town, including the town's authority to make any proper public use of the public right-of-way.
- (d) The town council and the director may do all things which are necessary and convenient in the exercise of the town's jurisdiction under this chapter.
- (e) The town shall have the right to supervise all construction or installation work performed subject to the provisions of this chapter and make such inspections as it finds necessary to ensure compliance with the terms of this chapter, a right-of-way agreement, an encroachment

or excavation permit or any other local, state, or federal law, regulation, permit, or standard.

(Ord. 861 § 1 (part), 2001)

12.38.250 - Conflicts with other laws.

In the event of any conflict between the provisions of Title 12 of this code and this chapter, the most stringent provisions shall control.

(Ord. 861 § 1 (part), 2001)

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Section 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The Town Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

Section 3. Effective date. This ordinance shall become effective 30 days after the date of its adoption.

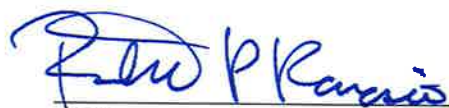
Section 4. Posting. The Town Clerk shall cause a summary of this ordinance to be published in the Marin Independent Journal within 5 days prior to passage and within 15 days after passage.

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This ordinance was introduced on the 15<sup>th</sup> day of January, 2019, and adopted on the 5<sup>th</sup> day of February, 2019 by the following vote:

AYES:	Councilmembers:	Andrews, Bailey, Beckman, Kunhardt, Ravasio
NOES:	Councilmembers:	- None -
ABSENT:	Councilmembers:	- None -
ABSTAIN:	Councilmembers:	- None -

APPROVE:

  
BOB RAVASIO  
MAYOR

ATTEST:

  
REBECCA VAUGHN  
TOWN CLERK

