

# **ORDINANCE NO. (            )**

## **AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, TO ADOPT A PROGRAM TO ACCEPT CERTAIN ALTERNATE ROAD RE-PAVEMENT REQUIREMENTS AND COLLECT AN IN LIEU PORTION OF RESULTING SAVINGS FOR ROAD TRENCHING ACTIVITIES IN THE LARKFIELD- WIKIUP AREA TO FACILITATE FIRE RECOVERY EFFORTS**

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The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. When excavators cut trenches into roadways for the purpose of laying utilities such as water, sewer, gas, electric and communication services, the trench cuts in the pavement damage the trench area and adjacent roadway. The trench cuts reduce the life span of the pavement. To remedy this damage, the County requires those performing such trench work to comply with road paving construction standard 219 (“Standard 219”).

Section II. In the fire damaged area of Larkfield-Wikiup identified in Exhibit A (“OnePave Area”), a high concentration of utility and other infrastructure work for individual rebuilding projects is anticipated, resulting in extensive trenching in the area’s roadways. As a whole, this activity would result in a patchwork of piecemeal trench repaving, resulting in degraded, poor-quality road surface and reduced pavement longevity.

Section III. It is the intent of the County to provide for better-quality, longer-lasting roads in the OnePave Area and facilitate recovery efforts. Accordingly, the County proposes a program where, in exchange for waiving existing re-pavement requirements and allowing compliance with an alternative, cheaper standard for temporary patching, trench permit holders would pay the County a portion of the savings they would incur. The amounts collected would be designated for a County-initiated, final, one-time pavement once most trenching activity is complete (“OnePave”).

Section IV. OnePave will have many benefits to encroachment permit fee payors including the following: reducing overall costs of complying with Standard 219, minimizing and avoiding construction congestion and project durations by eliminating the full re-pavement component of trench work projects, and eliminating the road surface quality impacts of piecemeal trench work.

Section V. For trench work in the OnePave area, encroachment permit holders will pay a fee that would reflect the difference in surface material costs between repaving to normal (full) Standard 219 specifications and the reduced costs of repaving to the less-extensive, alternative OnePave patching specification (“OnePave Fee”). The OnePave Fee calculation will be done on a per-project basis, to tailor the OnePave Fee to account for each project’s variables. First, the cubic footage of project resurfacing material (asphaltic concrete) will be calculated, based on the depth and square footage of repaving that ordinarily would be required under Standard 219. Then, the cost of the surfacing material to temporarily patch the trench (per the OnePave patching specification) will be subtracted. The net result will be one of the cost savings of the OnePave program and will constitute the OnePave Fee.

The OnePave Fee is in lieu of (and, less than) costs the encroachment permit holder would ordinarily incur to satisfy existing retrenching requirements. Labor, time, and contractor mobilization costs will also be saved by not having to repave to full Standard 219 requirements. In that the OnePave Fee does not attempt to capture these savings and instead is only based on the savings derived from using less materials, payors will realize many more benefits by virtue of the OnePave program. Also, in that the Fee is based on market

rates for roadway surfacing materials, the amount to be collected reflects a portion of the costs the County will incur to ultimately repave over those same trenches. As such, this proposed fee would recover the reasonable cost to perform this service and provide this benefit to the fee payors.

Section VI. OnePave Fees shall only be expended for the rehabilitation, resurfacing, administration and protection of the public right of way in the OnePave Area, including associated management, procurement, and operational costs and also including refunds if approved by the Director of Transportation and Public Works or his designee.

Section VII. California Constitution art. XI, §7, California Constitution art. XIII C and Government Code sections 50030, 54985, 65104, 66016 permit the County to recover the reasonable cost of providing encroachment permit and trench paving services that do not exceed the reasonable cost to confer these benefits and provide this service to the fee payors.

Section VIII. In addition to benefitting the encroachment permit fee payors, OnePave will provide many benefits to the community. OnePave will provide the following community benefits: (1) enhancing the construction of newly paved roads and sidewalks; (2) enhancing the uniformity of construction; (3) ensuring efficient, non-duplicative infrastructure in the public right of way; (4) reducing overall costs of all underground work in the public right of way, both utility and telecommunications related for public and private parties; (5) protecting the public health and safety with coordinated traffic safety measures; and (6) facilitating private communications deployment by reducing construction costs.

Section IX. To provide this benefit to the general public and enhance fire recovery efforts in the OnePave Area, the County will contribute general fund revenue and actively search for additional revenue sources to support OnePave and ensure the encroachment permit fee payors only pay an amount that reflects the reasonable cost of the service and benefit they receive.

Section X. This ordinance does not conflict with provisions of State law, including, but not limited to, Sections 7901 and 12808 of the Public Utilities Code related to interstate telecommunication franchises because the fees hereunder are not charged for the same right granted by State law, but instead, are charged to recover the reasonable costs of issuing the encroachment permit, performing the paving work over and adjacent to the trench that has been patched in compliance with Standard 219 and protecting the public right of way from piecemeal trench work that shortens the life of a street.

Section XI. This ordinance is consistent with Section 253(c) of the Federal Telecommunications Act of 1996 which expressly recognizes the authority of local governments to impose reasonable nondiscriminatory fees upon telecommunications providers using the public right of way as well as Government Code section 50030 which specifically authorizes the imposition of a permit fee that does not exceed the reasonable cost of providing the service for which the fee is charged.

Section XII. The County seeks to foster a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another. The County seeks to promote widespread access to the most technologically advanced telecommunications services for all residents and businesses in a nondiscriminatory manner.

Section XIII. Based on information presented to this Board, this Board finds that the proposed OnePave Fees comply with all legal requirements, including Art. XIII C of the California Constitution.

Section XIV. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion

of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section XV. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after sixty (60) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and finally passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019, on regular roll call of the members of said Board by the following vote:

**SUPERVISORS:**

Gorin:                      Zane:                      Gore:                      Hopkins:                      Rabbitt:

Ayes:                      Noes:                      Absent:                      Abstain:

**WHEREUPON**, the Chair declared the above and foregoing Ordinance duly adopted and

**SO ORDERED.**

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Chair, Board of Supervisors  
County of Sonoma

ATTEST:

\_\_\_\_\_  
Sheryl Bratton,  
Clerk of the Board of Supervisors