

ORDINANCE NO: 2011-01

**AN ORDINANCE OF THE ROLLING HILLS
COMMUNITY SERVICES DISTRICT
REGARDING CULVERT AND ROADWAY MAINTENANCE AND REPAIR**

WHEREAS, the Board of Directors (the "Board") of the Rolling Hills Community Services District (the "District") believes that establishing standards and regulations for culvert and roadway maintenance and repair within the boundaries of roadway easements dedicated to the District will protect against deterioration of District roadways from excessive water drainage or runoff;

NOW THEREFORE, the Board of Directors of the Rolling Hills Community Services District (District) ordains as follows:

SECTION 1. PURPOSE.

The purpose of this ordinance is (1) to establish the responsibilities and duties of property owners regarding maintenance and repair of the culverts located on their real property and within any roadway easement dedicated to the District in order to prevent deterioration of District roads and increased maintenance expenses due to excessive water drainage or runoff, (2) to preserve and protect the health and safety of community residents by protecting against deterioration of roads maintained by the District and to reduce road maintenance expenses incurred by the District in such cases; and (3) to establish a procedure requiring property owners within the District to pay all costs necessary to maintain or repair defective culverts located on their property and within a District roadway easement in order to preserve and protect the integrity and safety of District roadways.

SECTION 2. AUTHORITY

010 The District is authorized to adopt ordinances, pursuant to California Government Code section 61060.

020 The District is authorized to acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works within its boundaries, pursuant to California Government Code section 61100(1).

030 Government Code section 61103 provides that a district with authority granted under Government Code section 61100 shall have the powers, duties and authorities of a county with respect to its streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters and sidewalks of the district. Such powers include, but are not limited to the powers of a county to: (1) enact and enforce ordinances and regulations for the improvement, maintenance, protection, management, control or use of roads (Sts. & Hy. Code Section 940 *et seq.*); (2) to adopt all measures necessary to repair or prevent damage to roadways threatened by storm waters or floods, and the power to construct and

maintain gutters, culverts, flumes, ditches or canals for the purpose of directing such waters away from district roadways (Sts. & Hy. Code Section 964); (3) to issue encroachment permits with respect to district roadways with respect to any pipeline, culvert, driveway, private road, fence, or any structure or object placed in, under or over any portion of an easement dedicated to the district for roadway purposes (Sts. & Hy. Code Section 1460 *et seq.*); (4) to order the removal of encroachments on district roadway easements at the expense of the owner, occupant or person causing the encroachment and to charge a penalty of \$350 for each day the encroachment remains after providing notice of the need for removal of such encroachment (Sts. & Hy. Code Section 1480 *et seq.*); (5) to order any person who obstructs or injures any district road by means of ditches or dams, or diverts any water course onto any district road, or drains water from his or her property upon any district road which results in damage to the roadway, to immediately cease and discontinue such damage and to repair the road at his or her own expense, and to levy a penalty of \$350 for each day such injury remains (Sts. & Hy. Code Section 1487).

SECTION 3. CULVERT AND ROADWAY MAINTENANCE AND REPAIR.

010 Definitions.

As used in this ordinance, the terms listed below shall have the meaning assigned them.

- A. "Culvert" means a transverse drain, conduit or covered channel that conveys a flow under a roadway, driveway, pathway or embankment. Culverts are mainly used to divert rainfall runoff, stream water, or other water drainage or runoff to prevent erosion or flooding and to preserve the base of the roadways.
- B. "Defective culvert" means a culvert that, in the judgment of the General Manager, is in a condition such that the flow of water drainage or runoff is impeded or it is in such a condition as to interfere with its intended purpose to prevent erosion or flooding and to preserve the base of the roadways.
- C. "District" means the Rolling Hills Community Services District.
- D. "Encroachment" means all dirt, soil, trees, plants or plant material, water, debris, or other objects accumulated in or around the culvert which causes obstruction of the drain or channel or deterioration to the base of the roadways, and includes excess water which causes deterioration to the base of the roadways.
- E. "General Manager" means the General Manager of the Rolling Hills Community Services District, or designee.
- F. "Maintenance" means work undertaken to extend the life of the culvert and ensure that it functions as designed, including the removal of accumulated encroachment materials that prevent the flow of water drainage or runoff through the culvert, replacement or a crushed or damaged culvert; and activities to preserve and protect the base of the roadways.
- G. "Owner" means any person owning real property within the District where a culvert exists either on the property or within any roadway easement dedicated to the District.

- H. "Person" means any natural person, a partnership, corporation, or other entity, public or private.
- I. "Real Property" means a parcel of real property located within the District where a culvert exists thereon or within a roadway easement dedicated to the District.
- J. "Repair Work" means maintenance as specified by the General Manager.
- K. "Roadway" means any road, street or roadway easement dedicated to the District, located within the boundaries of Rolling Hills Community Services District, including Stonebriar, Shadow Hills and Springfield Meadows.

020 Owner's Duty to Maintain and Repair Culverts and Protect Roadways.

An owner shall have the duty to maintain and repair any culverts on such owner's real property or located within any roadway easement dedicated to the District in order to protect against deterioration of the base of the roadways.

030 Notice to Repair Defective Culvert.

When the General Manager has actual notice of the existence of a defective culvert or activity causing deterioration of the base of the roadways caused by the activities of the owner of property adjacent to such roadway, the General Manager shall give written notice to the owner of such real property where the defective culvert or activity is located, to repair the defective culvert or correct the activity. The General Manager may also give such notice to the person in possession of the real property, in addition to the notice given to the property owner.

040 Service of Notice.

The notice to repair shall be served on the owner by any of the following methods:

- A. Personal service of a copy of the notice on the owner;
- B. Mailing the notice to the owner by first class mail, postage prepaid, to the address of the owner as set forth on the last equalized assessment roll;
- C. Personal service of a copy of the notice on the person in possession of the real property, if a copy of the notice so served is also mailed to the owner in accordance with subsection B of this section;
- D. Posting the notice in a conspicuous place at the real property, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B of this section;
- E. If the notice is served on the owner by mail, the General Manager shall, not more than ten (10) days after the mailing of the first notice to repair, mail to the owner in the same manner an additional notice to repair, marked "second notice," containing the same information as was set forth in the first notice.

050 Contents of Notice.

The notice to repair shall, at a minimum, contain the following information:

- A. That the culvert is defective or the nature of the activity of the property owner is causing deterioration of the base of the roadway;
- B. The nature of the repair work required to be done, and the cost as estimated by the District based on bids obtained;
- C. The manner in which the repair work is to be done, including the specifications required by the District as to materials and workmanship, if any;
- D. The General Manager shall, in the notice to repair, provide that the owner may elect to perform the repairs himself or herself, have the repair work performed by a licensed contractor, or have the repair work performed by the District, through a contractor selected by the District. The General Manager shall include with the notice an agreement, in such form as is established by the General Manager, which sets forth the election of the owner and the District's requirements with respect to the manner in which the repair work must be performed. The owner shall make the election on the agreement and shall execute it and return it to the General Manager forthwith. If the owner elects to have the repair work performed by the District, the General Manager shall cause the repair work to be performed by the District within a reasonable period of time thereafter.
- E. If the owner or the person in possession of the property disagrees with the determination of the General Manager that the culvert is defective, that repair work is necessary, and/or that the specified activity is causing deterioration to the base of the roadway, such owner or person in possession of the property may appear at the next meeting of the District Board of Directors, which meeting date shall be specified in the notice, and at such time and place, show cause why the District should not order such repair work to be done.

060 Hearing.

At the time stated in the notice to repair, the District Board of Directors shall hear and consider all objections for the doing of such repair work. Upon the conclusion of such hearing, the District Board of Directors shall, (A) if it overrules such objections, confirm the order of the General Manager, or (B) if it finds good cause for the objections, make such order as it deems appropriate, including, rescission of the order of the General Manager directing the repair work. A written notice of the decision of the Board of Directors shall be mailed to the owner of the property.

070 Time for Commencement and Completion of Repair Work By Owner.

The owner shall commence the repair work required by the notice to repair within fourteen (14) days after the owner elects either to perform the repair work himself or herself, or hire a licensed contractor to perform the repairs. Once commenced the repairs shall be diligently prosecuted without interruption to completion to the satisfaction of District.

If the owner appears at a hearing of the Board as specified in the notice, and the Board of Directors confirms the order of the General Manager, then such work shall be

commenced within fourteen (14) days from receipt of written notice of the decision confirming such order.

080 Failure to Make Required Repairs.

If the repair work is not commenced by the property owner within the time specified in the notice, or, once commenced, is not prosecuted diligently and without interruption to completion to the satisfaction of District, the General Manager shall immediately commence and complete the repair work at the expense of District, which shall constitute a service charge of the District payable by the offending property owner. The cost of such repairs in addition to administrative and legal costs incurred by the District in completing the required repairs shall constitute a service charge of the District imposed on the property owner for the maintenance and repair services provided to the property owner by District pursuant to Government Code section 61115.

090 Collection Proceedings.

The service charge imposed on any property owner for maintenance and repair of defective culverts or damaged roadways found to have been caused by the property owner's defective culvert or other activities impacting the District's roadways may be collected in the same manner as any other charges for services and facilities provided by the District as specified in Government Code sections 61115(a)(b) and (c). Specifically, the District may provide for a basic penalty for the nonpayment of such service charge of not more than ten percent (10%) plus an additional penalty of not more than one percent (1%) per month for the nonpayment of such service charge and the basic 10% penalty.

In addition, the Board of Directors may recover any such service charge and penalty by recording in the office of the County Recorder of El Dorado County a certificate declaring the amount of the service charge and penalties due, the name and last known address of the person liable for those charges and penalties. From the time of recordation of the certificate, the amount of the charges and penalties shall constitute a lien against all real property of such property owner in El Dorado County.

As an alternative, the Board of Directors may provide that such service charge and penalty may be collected on the tax roll in the same manner as property taxes pursuant to the procedure specified in Government Code section 61115(b) after a public hearing has been afforded to the owner of such affected parcel.

100 Civil Liability for Injuries.

A property owner who fails to repair a defective culvert or protect against deterioration of District roadways after notice by District of the need to repair such condition pursuant to Section 030 hereof shall bear the civil liability for any personal injury or property damage

arising out of failure to repair such condition, until such condition has been repaired by either the District or the property owner.

SECTION 4. SEVERABILITY.

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The District Board of Directors hereby declares that it would have adopted this ordinance and each section, subsection, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.


SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in full within fifteen (15) days after its adoption in the Mountain Democrat newspaper.


This Ordinance was introduced and the title thereof read at the regular meeting of the Rolling Hills Community Services District Board of Directors on October 18, 2011, and further reading was waived.

On a motion by Tim Halverson, seconded by Mike Nevilida, the foregoing ordinance was passed and adopted by the Board of Directors of the Rolling Hills Community Services District this 15th day of November, 2011, by the following vote:

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| AYES: 3 | DIRECTORS: Halverson, Nevilida, Magee |
| NOES: 0 | DIRECTORS: - |
| ABSTAIN: 0 | DIRECTORS: - |
| ABSENT: | DIRECTORS: Kennedy |



President of the Board



District Clerk