

ORDINANCE NO: 2015-5

**AN ORDINANCE OF
GOLDEN WEST COMMUNITY SERVICES DISTRICT
REGULATING CULVERT AND ROADWAY MAINTENANCE AND REPAIR AND
ENCROACHMENTS ON DISTRICT PROPERTY**

WHEREAS, the Board of Directors (the “Board”) of Golden West Community Services District (the “District”) believes that establishing standards and regulations for maintenance and repair of culverts and roadways within the boundaries of roadway easements dedicated to the County and maintained by the District and the issuance of encroachment permits to allow members of the public to access such roadways for purposes of maintenance and repair will protect against deterioration of District roadways from excessive water drainage or runoff;

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

SECTION 1. PURPOSE

The purposes of this Ordinance are (1) to establish the responsibilities and duties of property owners regarding installation, improvement, maintenance and repair of the driveways and culverts located within driveway encroachments upon any roadway or easement dedicated to the County and maintained by the District in order to prevent deterioration of District roads and increase 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 in an encroachment within a District roadway easement in order to preserve and protect the integrity and safety of District roadways.

This Ordinance regulating encroachments upon District Property sets forth the procedures to be followed by an owner of property within the District to obtain permission from the District to access District Property for the purpose of gaining access to other property, or for the purpose of constructing and/or maintaining any improvements, structures or objects which are partially located on District Property, easements, or rights-of-way including, but not limited to landscaping, building extensions, fences, retaining walls, culverts, pipelines, or other structures or improvements. This Ordinance also specifies the criteria that the District will utilize in issuing Encroachment Permits for authorized uses of District Property which do not interfere with the District’s use of such property for the provision of public services.

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(l).

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 enact and enforce ordinances and regulations for the improvement, maintenance, protection, management, control or use of roads (Sts. & Hy. Code ' 940 et seq.); 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 ' 964); 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 ' 1460 et seq.); 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 ' 1480 et seq.); 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 ' 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. "Designated Representative" means a person or persons designated in writing to act on behalf of, and with the authority of, the District or a property Owner. The term "Designee" is synonymous with "Designated Representative."
- D. "District" means Golden West Community Services District.
- E. "District Property" includes all of the County roads maintained by the District and any part of property owned by the District, and rights-of-way and easements granted to the District or dedicated to the County and maintained by the District.
- F. "Encroach" means to construct, erect or maintain in, over or under any District Property, right-of-way, easement, roadway, parking strip and/or sidewalk, including the airspace above them, any structure or object of any kind or character, including but not limited to, building extensions, fences, retaining walls, landscaping, culverts, bridges, pipelines, or other structures or improvements. "Encroach" also means to permit the accumulation of dirt, soil, debris, plant material, or other objects which cause obstruction of a culvert, drainage or channel. "Encroach" also means to obtain access over District Property for permissible purposes.
- G. "Encroachment" means any structure or object or improvement of any kind or character, including but not limited to, building extensions, fences, retaining walls, landscaping, culverts, bridges, pipelines, or other structures or improvements located on District Property. "Encroachment" also means the accumulation of dirt, soil, debris, plant material or other objects which cause obstruction of a culvert, drainage or channel. "Encroachment" also means to obtain access over District Property for permissible purposes.
- H. "General Manager" means the General Manager of Golden West Community Services District, or designee.
- I. "Maintenance" means work undertaken to extend the life of a culvert or driveway and to ensure that it functions as designed, including the removal of accumulated encroachments or encroachment materials that prevent the flow of water drainage or runoff through the culvert, replacement of a crushed or damaged culvert; and activities to preserve and protect the base of the roadways.
- J. "Owner" means any person owning real property within the District where a driveway and culvert exists or is to be installed either on the property or within any roadway maintained by the District.
- K. "Person" means any natural person, a partnership, corporation, or other entity, public or private.
- L. "Real Property" means a parcel of real property located within the District where a culvert and or driveway exists or is to be constructed thereon or within a District roadway.
- M. "Repair Work" means maintenance as specified by the General Manager.
- N. "Roadway" means any road, street or roadway owned by the County and maintained by the District, located within the boundaries of Golden West Community Services District.
- O. "Permittee" means an owner of real property or owners designated representative, who is the holder of a permit to create an encroachment upon District Property.

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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 County and maintained by the District abutting such owner's property, and remove any encroachments upon notice by 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, an encroachment obstructing drainage of the culvert, or any 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 damaging activity is located, to repair and maintain the defective culvert, remove any obstructions constituting an encroachment, and/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 Certified mail with return receipt requested . This notice may be followed by additional notices delivered 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, contain the following information at minimum,:

- A. That the culvert is defective or the nature of the activity causing an encroachment, obstruction of the culvert, or deterioration of the base of the roadway;
- B. The nature of the repair work required to be done;
- 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 30 days.

E. A notice stating that if the owner or the owners designee disagrees with the determination of the General Manager that the culvert is defective, that an encroachment exists, that repair work is necessary, and/or that the specified activity is causing deterioration to the base of the roadway, such owner or owners designee 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, up to and 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 thirty (30) 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 completed without interruption 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 (3014) 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 within 30 days thereafter cause the District to make the required repairs at District's expense. 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. The District shall send an invoice to the Permittee or Owner detailing the costs incurred by the district and payable by the Permittee or Owner, which invoice shall be due and payable within 30 days after mailing.

090 Collection Proceedings.

The service charge imposed on any property owner for the costs incurred by the District in performing maintenance and repair of defective culverts or damaged roadways or removal of encroachments found to have been caused by the property owner's failure to comply with the provisions of this Ordinance 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. 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 or Permittee 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 or the Permittee, as the case may be.

100 Civil Liability for Injuries.

A property owner who fails to repair a defective culvert or Permittee that fails to remove an obstructive encroachment or protect against deterioration of District roadways after notice by District of the need to repair such condition pursuant to this Ordinance shall bear the civil liability for any personal injury or property damage arising out of failure to repair such condition, and shall defend and indemnify the district for any claims, liability, damages, causes of action and litigation expenses and costs pursuant to Section 4 subsection 04. of this Ordinance.

SECTION 4. ENCROACHMENTS

010 Encroachments--Restricted.

It is unlawful for any person to undertake any excavation or place an encroachment in, under or over any District Property whether or not currently improved, or to permit an encroachment to exist on District Property except in the manner and mode provided in this Ordinance. An Encroachment Permit is required to encroach upon any portion of District Property.

The District will issue Encroachment Permits for authorized uses of District Property which do not interfere with the District's use of such property for the provision of public services. Such Encroachment Permits only permit limited access to District Property for temporary periods of time for the purpose of constructing driveways and installing culverts or other permanent encroachments as defined in Section 3.010.G of this document.

020 Permit Application--Information Required.

A District resident or property owner within the District must complete the District's form of Application for Encroachment Permit and receive an Encroachment Permit from the District in the following circumstances: (1) whenever a resident or property owner desires to install or construct physical improvements, including but not limited to landscaping, fencing, retaining walls, culverts, bridges, pipelines, drainage channels or other structures or improvements on District Property; (2) whenever a District resident or property owner desires to secure temporary access over District Property in order to access other property; (3) whenever a District resident or property owner desires to excavate, or deposit the displaced soil from an excavation on District Property. The form of Application for Encroachment Permit is attached hereto, marked Exhibit A and incorporated herein by this reference. The Application requires the following information:

- A. Name and address of the applicant, the owner or other person responsible for the proposed encroachment, and the contractor or other person responsible for installing or constructing any physical improvements upon District Property; actually making the proposed encroachment;
- B. Location of the encroachment;
- C. Nature of the encroachment, whether for the purposes of constructing and/or maintaining structures or improvements on District Property, utilizing District Property to secure access to other property;
- D. Estimated time for commencement and completion of any construction work or installation of improvements on District Property, and/or duration of access across District Property to obtain access to other property;
- E. Site plans showing relationship of proposed improvements to be installed on District Property;
- F. Other information as may be required by the District;
- G. Signature of the applicant, property owner, and contractor.

030 Permit Fee.

The fees for processing and reviewing the permit application and conducting the necessary inspections shall be established by resolution of the Board of Directors.

040 Indemnification.

The Permittee and or Owner shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them from and against all actions, liability, damages, claims, losses or expenses of every type and description to which it may be subjected or put to by reason of or resulting from: (1) the performance of, or failure to perform, the work or any other obligations imposed by the Encroachment Permit or the District's notice to repair or maintain a defective culvert by the Permittee, Owner, or any subcontractor, agent or employee of Permittee or Owner (2) any alleged negligent act or omission of the Permittee or Owner, any subcontractor, agent or employee of Permittee or Owner in connection with any acts performed or required to be performed pursuant to the Encroachment Permit or pursuant to a notice from District to repair or maintain a defective culvert (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of the Permittee, Owner, or any subcontractor, agent or employee of Permittee or Owner in carrying out the provisions of the Encroachment Permit or performing repairs and maintenance of a defective culvert pursuant to Notice from the District. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

050 Insurance.

If, in the opinion of the District, the construction or installation work, or the proposed use of District Property specified in any encroachment permit application, or the repair and maintenance works proposed to be performed by an Owner pursuant to a Notice from the District to repair or maintain a defective culvert, entails any undue risk of injury, death, or damage to any member of the public, the District may, prior to issuing such permit or permitting such repairs and maintenance, require the applicant to provide proof of liability insurance in the amount specified by the District, naming the District, its employees, officers, officials, and volunteers as additional insureds.

Any applicant for an encroachment permit allowing construction or installation work on District Property shall certify that it, or its licensed contractor will have in place workers' compensation coverage for any and all employees or contractors performing such work, or will be self-insured for such purposes.

060 Permit—Approval, Refusal or Revocation.

Any application for an encroachment permit may be approved or denied, and any encroachment permit may be revoked, by written order of the General Manager of the District, effective immediately, a copy of which shall be mailed to the Applicant/Permittee at the addresses specified in the permit, upon any one or more of the following grounds:

1. Violation of any of the provisions of this Ordinance;
2. Misrepresentations of any material fact in the application;
3. Violation of the terms or conditions of the permit;

070 Delay or Defects in Construction or Installation of Improvements.

If any work to be constructed or improvements to be installed on District Property constituting the encroachment are not completed within the time allowed by the Encroachment Permit, or are not constructed or maintained pursuant to District specifications as provided in the Encroachment Permit, the District shall notify the Permittee in writing of the deficiency. If the Permittee does not remedy the deficiency within the time specified in the written notice, the District shall have the remedies specified in sections 080 and 090 of this Ordinance.

080 Appeal.

A. The actions of the General Manager in refusing to issue an encroachment permit, failing to act upon an application for an encroachment permit within thirty (30) days after it is filed and deemed complete by the General Manager, imposing unreasonable terms or conditions on the permit, or revoking an encroachment permit may be appealed to the Board of Directors by filing a notice of appeal with the secretary of the board within ten days following the action being appealed.

B. The notice shall state one or more of the grounds for an appeal set forth in this section relied on by the appellant. The secretary shall within thirty (30) days of notice schedule the appeal to be heard by the Board of Directors and shall notify the appellant and the General Manager of the date and time of the hearing on the appeal. At the time fixed for the hearing, the Board of Directors may take such action on the permit as the Board finds just and may continue the hearing on the appeal from time to time by order entered into its minutes specifying the date and time of the continued hearing.

090 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 affect 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.

100 Violation.

A. Pursuant to Government Code Section 25132 and El Dorado County Code Chapter 12.08, any person violating any provision of this Ordinance shall be guilty of an infraction and shall be punishable by a fine not exceeding one hundred dollars (\$100.00) for the first violation, and a fine not exceeding two hundred dollars (\$250.00) for a second violation within one (1) year. The third and each successive violation of this Ordinance in the period of one (1) year shall constitute a misdemeanor and shall be punishable by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment. Each day any violation of this Ordinance continues shall constitute a separate offense.

B. The violation of any provision of this Ordinance shall constitute a public nuisance subject to abatement in any manner authorized by law. . (Health & Safety Code Sections 2060 – 2067)

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SECTION 5. EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided notice is published 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 Golden West Community Services District Board of Directors on _____, and further reading was waived.

On a motion by _____, seconded by _____, the foregoing ordinance was passed and adopted by the Board of Directors of Golden West Community Services District this _____ 201_, by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSTAIN: DIRECTORS:

ABSENT: DIRECTORS:

President of the Board

DISTRICT SECRETARY
