

ORDINANCE NO: 2011-02 (Amending Ordinance No: 2006-01)

**AN ORDINANCE OF THE ROLLING HILLS
COMMUNITY SERVICES DISTRICT
REGARDING SIDEWALK AND ENCROACHMENT MAINTENANCE AND
REPAIR**

WHEREAS, the Board of Directors (the "Board") of the Rolling Hills Community Services District (the "District") believes that establishing standards for sidewalk and gutter maintenance and repair within the boundaries of roadway easements dedicated to the District will protect against deterioration of District sidewalks, curbs, gutters and roadways from excessive water damage and runoff as well as additional encroachments as defined herein;

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

SECTION 1. PURPOSE.

The purpose of this ordinance is to preserve and protect the health and safety of community residents by (1) establishing the responsibilities and duties of property owners regarding maintenance and repair of curbs, gutters and sidewalks located on their real property within any roadway easement dedicated to District in order to prevent damage to and deterioration of District's sidewalks, curbs and gutters as well as increased maintenance expenses incurred due to excessive damage to such structures; and (2) establishing the responsibilities and duties of property owners regarding maintenance of trees, plants and other encroachments which may cause damage to curbs, gutters, sidewalks and road surfaces within roadway easements dedicated to the District, or which may adversely affect visibility of potential traffic hazards on District roadways; and (3) establishing a procedure for requiring property owners within the District to pay all costs necessary to maintain or repair damaged sidewalks, curbs, gutters or roadway surfaces within District roadway easements found to have been caused by activities of an adjacent property owner or encroachments maintained by such property owner.

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 sidewalks, curbs, and gutters located within district roadway easements (Sts. & Hy. Code Section 940 *et seq.*); (2) to adopt all measures necessary to repair or prevent damage to streets, curbs and gutters located within district roadway easements caused by water drainage or runoff, tree roots, or other encroachments maintained by a property owner, and the power to prepare and improve such improvements to maintain public health and safety (Sts. & Hy. Code Section 964); (3) to issue encroachment permits with respect to district sidewalks, curbs and gutters with respect to any pipeline, culvert, driveway, private road, tree roots, overhanging tree branches impeding traffic visibility, fences, or any other structure or object placed in, under or over any portion of a district roadway easement including sidewalks, curbs and gutters (Sts. & Hy. Code Section 1460 *et seq.*); (4) to order the removal of encroachments on district sidewalks, curbs and gutters at the expense of the owner, occupant or person causing the encroachment, including encroachments causing damage to such sidewalk, curb or gutter, encroachments obstructing or preventing the use of district sidewalks, curbs and gutters, encroachments consisting of refuse, and encroachments which constitute a traffic hazard; 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); (5) to order any person whose activities cause damage to any district sidewalk, street or gutter or who maintains encroachments which cause damage to or obstruct the safe use of district sidewalks, streets and gutters, to immediately cease and discontinue such damage and/or encroachment and to repair the damage to such sidewalk, curb and gutter and remove such encroachment 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. **SIDEWALK MAINTENANCE AND REMOVAL OF ENCROACHMENTS.**

010 **Definitions.**

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

A. "Defective sidewalk" means a sidewalk, curb or gutter where, in the judgment of the General Manager, the vertical or horizontal line or grade is altered or displaced to an extent that a safety hazard exists; the sidewalk, curb or gutter is in such a condition as to endanger persons or property or is in such a condition as to interfere with the public use thereof; or, there is an encroachment on the sidewalk, curb, gutter or roadway.

B. "District" means the Rolling Hills Community Services District.

C. "Encroachment" means all trees, plants or plant material, water, debris, recreational equipment, vehicles, pipelines, tree roots, overhanging vegetation, fences, signs, or any structure or object placed in, under or over any portion of a sidewalk, curb and/or gutter lying within a district roadway easement, or any other object which obstructs or impairs the use of a sidewalk, curb, or gutter by the public, or endangered persons using the sidewalk, curb, or gutter.

D. "General Manager" means the General Manager of the Rolling Hills Community Services District, or designee; and shall have the same meaning as the terms "superintendent of streets" and "District engineer" as those terms are utilized in the Streets and Highways Code, Division 7, Part 3, Chapter 22, as those provisions now exist or are hereafter amended or renumbered.

E. "Lot," "lots" or "portion of a lot" means a parcel of real property located within the District, fronting on any portion of a public street, alley or place where a sidewalk, curb or gutter exists. When used in connection with the words, "fronting on the defective sidewalk," or variation thereof, it shall refer to the property in front of or along the side of the defective sidewalk.

F. "Owner" means any person owning a lot, lots or portion of a lot within the District, and fronting on any portion of a public street, alley or place where a sidewalk, curb or gutter exists.

G. "Person" means any natural person, a partnership, corporation, or other entity, public or private.

H. "Repair" means (1) the removal of all or a portion of the existing sidewalk, curb or gutter, as specified by the General Manager, and replacement in kind to specifications established by the General Manager, to a plane surface equivalent to that which existed prior to any sidewalk, curb or gutter damage, (2) the removal, correction or remedying of a dangerous or defective condition on the sidewalk, curb or gutter, such that persons or property passing thereon may safely do so; or (3) the removal of an encroachment, including without limitation tree foliage, branches or limbs which encroach over the sidewalk and do not allow for at least eight (8) feet of unobstructed space for persons to pass thereon; tree foliage, branches or limbs which encroach over the roadway and do not allow for at least twelve (12) feet of unobstructed space for vehicles to pass thereon; and tree foliage, branches or limbs which obstruct street and road signs such that visibility from both directions of vehicle travel is less than a distance of 100 feet.

020 Owner's Duty to Repair Defective Sidewalk and/or Remove Encroachment.

An owner shall have the duty to repair any defective sidewalk fronting on such owner's lot, lots or portion of a lot. Where the defective sidewalk is caused in whole or in part by a tree root or roots, the owner shall nevertheless have the duty to repair the sidewalk, curb or gutter, but the General Manager may grant permission to cut the root; provided, however, that if the root is other than a surface root, the General Manager shall consult with a qualified arborist concerning the manner of dealing with the subsurface root. An Owner shall also have a duty to remove encroachment of tree foliage, branches or limbs which encroach over sidewalks, roadways, or which obstruct visibility.

030 Notice to Repair.

When the General Manager has actual notice of the existence of a defective sidewalk or the existence of an encroachment causing damage to the sidewalk, curb or gutter or impairing the safe use of such sidewalk, curb or gutter, the General Manager shall give written notice to the owner to repair the defective sidewalk, or remove the

encroachment. The General Manager may also give such notice to the person in possession of the said lot, lots or portion thereof, in addition to the notice given to the 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 lot, lots or portion thereof, fronting on the defective sidewalk, or upon which the encroachment is located, 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 lot or lots fronting on the defective sidewalk or encroachment, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B of this section;

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 damage to the sidewalk, curb or gutter has resulted due to activities of the property owner or due to an encroachment maintained by said property owner;
- B. The nature of the work required to be done, and the cost as estimated by the District based on bids obtained;
- C. The manner in which the repair or the removal of the encroachment is to be done, including the specifications required by the District as to materials and workmanship;
- 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 work performed by a licensed contractor, or have the 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 repairs 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 repairs performed by the District, the General Manager shall cause the 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 either a property owner's activities or an

encroachment maintained by the property owner has caused damage to a sidewalk, curb or gutter, or that an encroachment exists, and/or that repairs are necessary, 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 or reconstruction 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 repairs. 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 repairs 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 repair of damage to sidewalks, curbs and gutters within District roadway easements due to activities of the property owner or encroachments maintained by a property owner, as well as for removal of any

such encroachment found to have caused damage to District sidewalks, curbs and gutters may be collected in the same manner as any other charges for services and facilities provided by the District and 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 damaged sidewalk, curb or gutter or who fails to remove an encroachment after notice by District of the need to repair such condition or remove such encroachment pursuant to Section 040 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.

110 Alternative Procedure.

This ordinance provides sidewalk, curb or gutter repair procedures which are alternative and supplementary to the procedures set forth in the Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The District, in each instance, may follow the procedure set forth in the Streets and Highways Code or those set forth in this ordinance.

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 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.

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 Mike Nevilida, seconded by Mark Magee, 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:

AYES: 3	DIRECTORS: Halverson, Nevilida, Magee
NOES: 0	DIRECTORS: -
ABSTAIN: 0	DIRECTORS: -
ABSENT: 1	DIRECTORS: Kennedy



President of the Board



District Clerk