

ORDINANCE NO. 2013-01 (amending 2010-02, 2009-01)

**AN ORDINANCE OF THE ROLLING HILLS
COMMUNITY SERVICES DISTRICT
REGARDING ENCROACHMENT PERMITS**

WHEREAS, the Board of Directors (the "Board") of the Rolling Hills Community Services District (the "District") believes that establishing rules governing the issuance of encroachment permits will serve to preserve the integrity, use and safety of District facilities and properties; and

WHEREAS, the Rolling Hills Community Services District is authorized to adopt ordinances, pursuant to California Government Code section 61060; and

WHEREAS the District believes that the adoption of an encroachment permit process whereby a property owner would be required to obtain a permit and execute a release and indemnification agreement is necessary to protect District property and protect the health and safety of community residents;

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

SECTION 1

PURPOSE

The purpose of this ordinance is to provide rules governing the issuance of encroachment permits for all properties within the Rolling Hills Community Services District located in El Dorado County, California.

- I. Permit Required. Whenever a property owner desires to install, construct, or place physical improvements – landscaping, fencing, retaining walls, culverts, bridges and/or other structures or improvements, including but not limited to basketball hoops and portable toilets, on, above or below the surface of any portion of their land which is encumbered by a district facility or dedicated easement or right of way, or seeks permissive authority to enter into District owned property for ingress and egress to perform the activity, they shall apply for and receive an Encroachment Permit (Permit).

11. Permit – Application. Prior to commencement of said installation or construction, applications shall be filed with the General Manager. Applicants for permits under this section must file an application in writing on a form to be furnished by the District, which shall set forth the following information:
 - a. The name, address, and telephone number of the applicant;
 - b. The date of application;
 - c. The location of encroachment and reason for encroachment;
 - d. The name, address and telephone number of the contractor, if applicable;
 - e. The requested expiration date for the permit; and

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f. Plans for structures or improvements may be required by the General Manager to be submitted and approved to ensure that the resulting installation adequately accommodates and/or is compatible with existing district facilities.

III. Permit – Application Fee. All permit applications shall be submitted with a payment of a fee in the amount as set forth in the District's Fee Schedule in effect on the date of application to cover the District's administrative and inspection costs, and the additional costs to record the Encroachment permit with the County Recorder, if applicable. Standard inspection costs shall include two site visits, the first prior to commencement of the encroachment activity, the second at the conclusion of the encroachment activity.

IV. Permit – Issuance. Upon the filing of a complete application for an Encroachment Permit, the General Manager shall review, approve, approve with conditions, or deny it within ten (10) business days of receipt. Permits will be granted on a case-by-case basis as determined by the District. Approval with conditions may include specifications for construction materials and procedures as may be necessary. When the grounds for permit denial can be corrected by imposing reasonable permit conditions, the General Manager may impose such conditions rather than deny the permit application.

V. Release and Indemnification Agreement. Applicant shall execute a hold harmless agreement, in a form approved by District, to defend, indemnify and save harmless the District, its officers, agents, employees and representatives, and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expense, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with the alleged acts or omissions of the permit holder, its officers, agents or employees in connection with the Encroachment Permit activities. This indemnification agreement shall be executed prior to the issuance of the Permit.

VI. Permit – Notice of Issuance. Immediately upon the issuance of the permit, the General Manager shall send a copy thereof to the applicant.

VII. Permit – Notice of Permit Denial. If a permit application is denied, the General Manager shall provide the applicant with written notice of denial, which must contain a statement of facts upon which the denial is based and a statement of the appeal procedure set forth in paragraph XI, hereof.

VIII. Service Charge. In addition to the application fee paid pursuant to paragraph III, above, the District reserves the right to levy a service charge should the scope of the encroachment permit require the District to incur expenses in connection with re-inspection over and above the standard inspection costs set forth in paragraph III, above.

IX. Permit – Use. A Permit holder shall comply with all Permit conditions, and with all applicable laws and ordinances. The encroachment Permit shall expire as provided in the Permit issued. An Encroachment Permit is not a property right, such as an easement, nor does it confer a property right. It cannot be transferred with the sale of the real property. A new property owner must apply for and obtain a new Encroachment Permit for any activity to be performed.

X. Permit – Revocation. Permits issued pursuant to this Section may be revoked by the General Manager for failure to comply with the provisions of this section, failure to comply with any Permit terms and conditions, or at any time the General Manager learns that the Permit application contains false or misleading information. District's authority to revoke a Permit pursuant to this Section shall be in addition to any other remedies available to District under applicable laws.

XI. Appeal Procedure. Any person excepting to the denial or revocation of a Permit under this Section shall have the right, within five (5) business days after receiving notice in writing of the denial or revocation, to file a written appeal to the Board of the District. The appeal shall set forth the specific grounds upon which it is based. The Board shall hold a hearing on the appeal within forty-five (45) days after its receipt by the District, or at a time thereafter agreed upon and shall cause the appellant to be given at least five (5) business days written notice of such hearing. At the hearing, the appellant or its authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of the appeal. The determination of the Board on appeal shall be final.

SECTION 2.

AUTHORITY

I. The Rolling Hills Community Services District is authorized to adopt ordinances, pursuant to California Government Code section 61060.

II. Government Code section 61064(a) and (b) provides that violation of an ordinance or any citation issued for such a violation may be processed either as a misdemeanor or an infraction.

III. Penal Code sections 17(d), 19.8 and 19.2 provide that the District can levy a fine for a violation of the ordinance in an amount not to exceed \$250.00 for each violation.

IV. Any person violating any of the provisions of this Ordinance shall be guilty of an infraction and shall be punished by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation within one year; (3) a fine not exceeding two hundred fifty dollars (\$250) for each additional violation within one year.

V. Any encroachment without a permit, or in violation of a condition of a permit, shall constitute a public nuisance under Civil Code section 3479 and Government Code section 61069, which may be abated by the District.

VI. In the event the District commences a legal action to remove an encroachment that a property owner refuses to remove after due notice, the property owner will be obligated to reimburse the District for its attorney's fees incurred in removing the encroachment if the District is successful in that action.

SECTION 3.

DEFINITIONS

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

I. "District" means the Rolling Community Services District.

II. "General Manager" means the General Manager of the Rolling Hills Community Services District, or designee.

III. "Permit" means the Encroachment Permit issued pursuant to this Section authorizing the encroachment activity described in the Permit.

IV. "Service Charge" means the actual costs that the District incurs in connection with the encroachment activities subject to a Permit, including but not limited to inspection costs,

administration or coordination by District.

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 a local newspaper.

This Ordinance was introduced and read in its entirety at the regular meeting of the Rolling Hills Community Services District Board of Directors on September 17, 2013.

On a motion by Director Chaney Hicks, seconded by President Tim Halverson, the foregoing ordinance was passed and adopted by the Board of Directors of the Rolling Hills Community Services District this 15th day of October, 2013, by the following vote:

AYES: 3	DIRECTORS: Halverson, Kennedy, Magee
NAYS: 0	DIRECTORS: None
ABSTAIN: 0	DIRECTORS: None
ABSENT: 2	DIRECTORS: Sites, Fawkes

Tim Halverson
PRESIDENT OF THE BOARD



Linda Stone
BOARD SECRETARY

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