

ORDINANCE NO.

**AN ORDINANCE PROHIBITING THE ACCESS OR TRESPASS INTO THE
RIGHT-OF-WAY OF THE ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT FOR ANY PURPOSE,
WITHOUT FIRST OBTAINING AN APPROPRIATE
ENCROACHMENT PERMIT THEREFOR.**

The Board of Supervisors of the Alameda County Flood Control and Water Conservation District do ordain as follows:

SECTION I. - TITLE

This Ordinance shall be known as the “Permit Ordinance” of the Alameda County Flood Control and Water Conservation District.

SECTION II. - DEFINITIONS

Section 1. Context: Unless the particular provision or the context otherwise requires, the definitions provided in the following Section shall govern the interpretation and application of this Ordinance.

Section 2. Definitions:

- a) “Applicant” means a person applying for a Permit under the requirements of this Ordinance.
- b) “Board” means the Board of Supervisors of the Alameda County Flood Control and Water Conservation District.
- c) “City” means an incorporated city located within the boundaries of the County of Alameda.
- d) “County” means the County of Alameda.
- e) “Director” means the Director of the Public Works Agency of the County or his/her designee.
- f) “District” means the Alameda County Flood Control and Water Conservation District.
- g) “Encroachment”, means the act of going upon or using District Right-of-way for any lawful purpose including but not limited to, those activities described in this Ordinance.

- h) “Facility” means any access feature, access roadway, bank, conduit, dam, fence, inlet, measurement gauge, outfall, structure, waterway, well or any other appurtenance that is located or proposed to be located within property which is under the jurisdiction of the District or which is or will be otherwise considered part of the District Right-of-way. “District Facility” means any such facility that is or that will be considered part of the District-maintained flood control system. “Utility Facility” means any such facility that is or that will be owned, leased, operated, maintained, repaired, or licensed by a Utility. “Owner Facility” means any such facility that is or that will be owned, leased, operated, maintained, repaired, or licensed by an Owner.
- 1) “Access Feature” means any manhole, cover, steps, pull box, splice box, steps, ladder, gate, railing, landing, handhold, walkway or other such structure providing access for personnel.
 - 2) “Access Roadway” means any roadway, driveway, approach, trail, turnaround, pull-off, or other such area providing vehicular access.
 - 3) “Bank” means any embankment, dike, levee, wall, liner, fill, stabilization, or other natural or artificial bordering device, boundary feature, or containment adjoining any natural or artificial waterway.
 - 4) “Conduit” means any open or closed pipe, flume, box, culvert, or other structure, located above, on, or below the surface of the ground, providing a passage for the conveyance of water, storm water, sewage, gas, electric wiring, telecommunications lines, cable, or other devices or materials.
 - 5) “Dam” means any natural or artificial structure, wall, weir, dike, levee, coffer, or other such barrier, temporary or permanent, providing for the holding, delay, or storage of waters.
 - 6) “Fence” means any fence, wall, or other such structure providing a security barrier; and all parts and elements thereof, including gates, posts, guys, wires, fabric, coatings, turnbuckles, locks, rings, guides, latches, hasps, caps, supports, and other such hardware.
 - 7) “Inlet” means any opening, place of ingress, entrance, or other orifice, providing for the collection and transfer of waters into a waterway; and all elements thereof, including frames, grates, angles, acreens, bodies, connections, and other such parts and hardware.
 - 8) “Measurement Gauge” means any device providing for the measurement, monitoring, recordation, or transmission of data and all associated wiring, supports, boxes, brackets, mounts, casings, covers, transceivers, sensors, and other such parts.

- 9) “Outfall” means any outlet, spillway, pipe end, place of egress, waterfall, or exit providing for the transfer of waters from a collection facility into a waterway; and all elements thereof, including rock, fabric, concrete, steps, marker posts, valves, tide gates, screens, and all other such parts and hardware.
- 10) “Property” means any waterway, bank, access road, or other land area under the jurisdiction of the District.
- 11) “Structure” means any constructions of any kind, temporary or permanent, including waterways, buildings, fences, signs, posts, markers, paving, poles, outfalls, dams, spillways, pumps, conduits, inlets, access features, wells, access roads, measurement gauges, bridges, walls, flap gates, trash racks, siphons, rip rap, slope protection, guy wires, anchors, or other works made of concrete, steel, glass, plastic, rock, earth, or other materials.
- 12) “Waterway” means any natural or artificial channel, stream, creek, river, rivulet, brook, canal, ditch, swale, marsh, conduit, gully, arroyo, wash, diversion, bypass, basin, pond, reservoir, drainage system, or other feature allowing the continuous or intermittent flow of waters in a definite direction and course; or providing for the holding, delay, storage, or conservation of waters.
- i) “Owner” means any person, other than a utility, who owns property at or adjacent to the right-of-way at the site of, or in proximity to, the proposed Encroachment.
- j) “Permit” means an encroachment permit issued by the District under the terms of this Ordinance.
- k) “Permittee” means that person who, having been granted a Permit, is responsible for the satisfactory completion of the Encroachment described in the said Permit.
- l) “Person” means any natural person, corporation, partnership, board, trustee, or governmental agency.
- m) “Right-of-way” means Property or Facilities which by deed, conveyance, agreement, easement, dedication, gift, usage, or process of law are reserved for and dedicated to the uses and purposes of the District.
- n) “Rubbish” means debris, garbage, or refuse of any kind, combustible or non-combustible, organic or non-organic, liquid or solid, water soluble or non-soluble.

SECTION III. - PROHIBITIONS

Section 1. Prohibitions: No Person shall enter or trespass onto; dump, discharge, or deposit rubbish or other material into; block, obstruct, modify, divert, destroy, cut, remove, or otherwise use; tunnel, bore, drill, or excavate into or under; interfere with; span, construct, landscape, or install structures over; or connect to - any District Right-of-way, without first having obtained a Permit therefor in accordance with the requirements of this Ordinance. Moreover, no such Permit shall be issued to any person lacking the authority to enter the Right-of-way for the purpose described in the application. For the purposes of this Ordinance, this authority to enter shall be limited to the following persons:

- a) The owner of the property at or adjacent to the site of the encroachment, or his/her agent - except that the director may, with the acknowledgment of the affected parties, authorize an owner or his agent to encroach upon the Right-of-way in other locations.
- b) The holder of an easement or other agreement, wherein the right to encroach for the purpose described in the permit application is clearly delineated.
- c) Others qualifying under the terms and conditions of this Ordinance.

SECTION IV. - PERMIT PROCEDURE

Section 1. Procedure: The written Permits required by this Ordinance shall be issued by the Director, subject to conditions set forth in this Ordinance, required by law, or established by the Director.

Section 2. Applications for Permits - Contents of Application Form: The Director shall prescribe and provide a regular form of application, for use by any Applicant, for the Encroachment Permit required by this Ordinance. The said form shall include, but shall not be limited to, space for the following items:

- a) Name, address, and telephone number of the Owner.
- b) Name, address, and telephone number of the Applicant - in the event that the Applicant is not the owner.
- c) Name, address, and telephone number of the person who will actually perform the Encroachment - in the event that the said person is not the Owner or the Applicant.
- d) Contractor's license number and Worker's Compensation Insurance Certificate number of the person who will be performing the Encroachment, if appropriate.

- e) A complete description of the proposed Encroachment, including the dimensions, duration, and purpose of the intended use.
- f) A listing of all supporting documentation, if applicable.

The application form shall be completed and submitted, along with copies of the applicable documentation from the following list, to the Director for review:

- a) A copy of all required consent forms; see Section IV. 4.
- b) A map of the proposed Encroachment; see Section IV. 3.
- c) Proof of ownership of the adjacent/proximate property - or if the Applicant is not the Owner, other documentation establishing the right of the Applicant to act on behalf of the Owner.
- d) Evidence of all required bonds; see Section IV. 8.
- e) Two (2) copies of all referenced plans and specifications.
- f) Hold harmless and indemnification form; see Section IV. 13.
- g) Maintenance agreement; see Section IV. 14

Section 3. Attachments to Application: Whenever required by the Director, the Applicant shall prepare and submit with the application form a map showing the location of the proposed encroachment and plans describing the full extent of the proposed work, including but not limited to, the following:

- a) The detailed impact on all existing District, Utility, and Owner Facilities.
- b) A complete description of all new or modified District, Utility, and Owner Facilities, including a description of the projected access requirements for future maintenance and repair.
- c) The designated zone, line, and segment of the applicable Right-of-way.
- d) Structural calculations for all proposed Owner Facilities and non-standard District Facilities.
- e) A description of the means of accessing the Encroachment site.
- f) A tentative schedule for the start and the duration of the Encroachment.

The Director may require that those plans which describe significant changes or additions to the Right-of-way be prepared and signed by a licensed engineer.

- Section 4.** Other Permits: The issuance of a Permit shall not, in any manner, relieve the Permittee from the obligation of obtaining any other permits or consents required by law or otherwise, nor impose upon the District any obligation with respect to said permits or consents, except that the Director shall have the authority to require, prior to issuance of the Permit, that the Applicant provide evidence of having obtained permits, consents, approvals, agreements, releases, or authorizations from other agencies having jurisdiction.
- Section 5.** Permit Limitations: The authority to enter, access, open, or to do other work, as granted by a Permit issued pursuant to this Ordinance, shall be limited to the boundaries of the Right-of-way. In those locations where access to or from the encroachment site requires entry into a public roadway under the jurisdiction of a City, the Permittee must first obtain permission for such an entry from the said City as a prerequisite to the issuance of a District Permit. The issuance of a District Permit shall not be construed as authorizing such an entry, nor shall it be construed as authorizing access to or from any other private or public property.
- Section 6.** Liability for Damages: The Permittee shall be responsible for all liability imposed by law for personal injury or property damage which may arise out of work or access permitted and done by the Permittee under the Permit, or which may arise out of failure on the part of the Permittee to perform his obligations under the said Permit, including liabilities arising out of the Permittee's failure to properly maintain the site of the encroachment authorized by the Permit. If any claim of such liability is made against the District, the County, or the officers or employees of the District or the County, the Permittee shall defend, indemnify and hold them, and each of them, harmless from such a claim. Nothing herein is intended to impose on the Permittee any different or higher standard of care than that required by law.
- Section 7.** Permit Fees: Except for those Permit fees which may be set by special resolution of the Board, the fee for each Permit shall be determined, by the Director, based upon a schedule adopted for this purpose by the Board.
- Section 8.** Permit Bond: All Applicants must furnish a cash deposit, surety bond, certificate of deposit, letter of credit, passbook account, or other equivalent financial instrument in an amount determined on a case-by-case basis by the Director to be sufficient to reimburse the District for those expenses that could be incurred in restoring the affected Right-of-way to its former condition. This deposit, bond, or other financial instrument shall remain in place pending close-out of the Permit.
- Section 9.** Additional Bond: In the event that the nature of the Encroachment is changed following issuance of the Permit, the Director shall have the authority to require that the Permittee provide additional deposits, bonds, or other financial instruments, if the original deposit, bond, or instrument furnished per Section 8 above is determined, by the Director, to no longer be sufficient to cover the costs of securing, repairing, and restoring the Right-of-way. Any such request for additional coverage shall be in writing. Failure of the Permittee to provide the said additional bond following such a request by the Director may be cause for suspension or cancellation of the Permit pursuant to Section IV.21.

- Section 10.** Condition of Deposits and Bonds: The condition of any deposit, bond, or other financial instrument furnished to the Director shall be that the Permittee will diligently and with good faith comply with the requirements of this Ordinance and shall perform all work or access in accordance with the terms and conditions of the Permit, including being responsible for the restoration of the Right-of-way pursuant to the terms and conditions of the Permit.
- Section 11.** Contractor's License: The Director may require that an Applicant proposing the removal, modification, or installation of an Owner Facility, the connection to or modification of an existing District Facility, or the installation of a new District Facility be a Contractor holding a valid license of the appropriate classification as described by the California Business and Professions Code - or if an Owner is the Applicant, that the said Owner present evidence that such a licensed Contractor has been engaged to actually perform the work. The Director may also require that an applicant present evidence that any contractor associated with the performance of the proposed encroachment have a valid County business license pursuant to Section 3.04.350C of this Code.
- Section 12.** Worker's Compensation Insurance: The Director may require that an Applicant proposing any encroachment which has, in the judgment of the Director, a valuation of one hundred dollars (\$100.00) or more, conform to the worker's compensation insurance requirements of the California Labor Code.
- Section 13.** Hold Harmless and Indemnification: The Director may require that an Applicant proposing the installation of an Owner Facility furnish a statement indemnifying and holding harmless the District, in a format and manner specified by the Director. Following acceptance of the installation of the said Facility by the District, the said statement will be recorded by the District.
- Section 14.** Maintenance Agreement: The Director may require that an Applicant proposing the installation of an Owner Facility enter into a special maintenance agreement with the District. Following acceptance of the installation of the said Facility by the District, the said agreement will be recorded by the District.
- Section 15.** Term of Permits: Unless otherwise specified in the Permit, work in or access to the encroachment area should be initiated within ninety (90) days of the date of issuance of the Permit. In the event that work or access is not started within this period, the Director shall have the authority to cancel or suspend the Permit, as described in Section IV.21. When an expiration date is entered on the Permit, the Permittee will be expected to complete the authorized encroachment, including clean-up and restoration of the site and notification of the District, prior to this date. If a permitted encroachment has not been completed by the Permit expiration date, the Director may extend the Permit period by amendment; however, work on and access to most District Rights-of-way will be restricted during the rainy season (October 15 - April 1).

Section 16. Maintenance and Completion of Encroachment; Responsibility for Subsequent Repairs: Upon initiation of an authorized Encroachment, the Permittee shall assume responsibility for the maintenance of the Encroachment area and shall continue to hold this responsibility throughout the period of access or work, including the final clean-up and restoration of the Right-of-way and the final inspection by the District; moreover, the Permittee shall retain, for the period extending up to three (3) years following the date of the said inspection, the responsibility for the repair of any subsequent failures of the restored Right-of-way that could reasonably be attributed to the Permittee's actions or inaction. The Director shall have the authority to hold the applicable Permit open and to retain any associated deposits or bonds for this period. The District will resume responsibility for the long-term maintenance of the site following the final close-out of the Permit; however, unless otherwise specified by the Director, the District's responsibility shall be limited to the primary flood control and water conservation system and its appurtenances and shall not be extended to Owner or Utility facilities, the maintenance of which shall continue to be the responsibility of the Owner or Utility.

Section 17. Repair of Damage to the Right-of-way: The Permittee shall be responsible for the prompt repair of any portion of the Right-of-way which has been damaged as either a direct or an indirect result of the Encroachment. In the event that such damages are not promptly repaired to the satisfaction of the Director, the Director may require that the necessary repairs be done by District work forces or others and the actual costs thereof billed to the Permittee.

Section 18. Permit Not Transferable: No Permit issued pursuant to this Ordinance is transferable.

Section 19. Permit to be Available: The Permittee shall keep the Permit at the site of the Encroachment, available to be shown to any authorized representative of the District or County or to any law enforcement officer upon demand. A Permit issued for a continuing Encroachment such as an operating owner facility may be kept at the place of business of the Permittee or otherwise safeguarded, but must be made available, within a reasonable time following demand, to any authorized representative of the District or County or to any law enforcement officer.

Section 20. Changes to Permit: No changes may be made at any time to the location or character of the Encroachment without a written authorization by the Director. In the event that such a formal change is necessary, the Director shall revise the original Permit by amendment. The Director shall have the authority to require that the applicant pay an additional Permit fee and/or provide an additional bond prior to issuance of the amendments, if the original fee and/or bond is determined, by the Director, to no longer be sufficient to cover the total anticipated costs of inspection and/or restoration of the site. See Section IV.9.

Section 21. Stop Work Order; Suspension or Cancellation of Permits: Whenever an Encroachment is being performed in a manner contrary to the requirements of this chapter, the Director shall have the authority to issue a written stop work notice to the person performing such an Encroachment or to the person causing such an Encroachment to be done. The notice shall include a complete description of the non-conforming activities and any necessary remedial action. In the event that the persons described above are not available, the said notice may be posted at a conspicuous place in the site of the Encroachment. Any person receiving such a notice must stop all work or access forthwith, secure the Encroachment site, and refrain from further activities pending a release from the Director.

In the event that an Encroachment is being performed in such a manner as to threaten the safety or the health of any Person or the functionality, real or projected, of the District flood control system, the Director shall, in addition to the above, have the authority to issue a written notice of Permit suspension or cancellation and to secure, make safe, repair, and restore the Encroachment site using District or County work forces or others. The Director shall also have the authority to demand, from the Permittee, payment to cover all costs accrued by the District or by the County which are associated with any actions deemed necessary to secure and make safe the encroachment site, to repair any damage caused by the Permittee to the Right-of-way or to adjacent property, and to restore the functionality of the Right-of-way; moreover, the Director may apply the proceeds of any deposit, bond, or other financial instrument furnished by the Permittee to the payment of the said costs.

Section 22. Future Relocations: If any future construction, reconstruction, repair, or maintenance work by the District, or by others, on the Right-of-way, requires the relocation, removal, or abandonment of Owner or Utility Facilities in, on, under, or over the said Right-of-way, the Owner or Utility shall relocate, remove, or abandon the said Facilities at his sole expense. When relocation, removal, or abandonment is required, the Director shall give said Owner or Utility a written demand specifying the anticipated interferences and the time period within which the relocation, removal, or abandonment must be completed. If the Owner or Utility fails to respond to or comply with the instructions of the Director, the Director may cause the removal, relocation, or abandonment of the Facilities at the expense of the Owner or Utility.

Section 23. Standards of Work: The Director may adopt such standard plans, standard specifications, design guidelines, permit provisions, and/or other rules as may be necessary to preserve, protect, and secure the Right-of-way. Except where the Director grants written approval to deviate, all work to be performed under a Permit shall conform to these plans, specifications, guidelines, provisions, and rules. Work standards and practices in any area not covered by the foregoing shall conform to generally recognized design and construction standards and practices.

Section 24. Permits to the County and to Other Agencies: Neither the County, the District, or contractors working for the County or the District shall be required to obtain a Permit in order to perform an Encroachment. All other public agencies requiring an Encroachment must apply for a Permit in the manner described in this Chapter, but no application fee shall be charged to them. All public agencies obtaining such Permits shall be expected to pay the normal review and inspection fees, except that the Director shall have the authority to waive such fees when no appreciable expense will accrue to the District. Privately owned public utilities requesting Permits shall be expected to pay the normal application, review, and inspection fees, except that the Director shall have the authority to waive such fees when no appreciable expense will accrue to the District.

Section 25. Appeal Procedure: Any Person aggrieved by the refusal by the Director to issue a Permit required by this Ordinance may, within thirty (30) days from the receipt of written notice from the Director of such refusal, appeal to the Board by filing a petition requesting approval of the Encroachment. If the Board finds all of the following to be true, a Permit for the said Encroachment shall be granted: (a) That the Applicant will be substantially damaged by the said refusal; (b) That no other means or method, except that proposed by the Applicant, is capable of obtaining the desired result; (c) That the granting of the Permit will not be materially detrimental to the safety, health, welfare or other interests of the public nor injurious to the property of others; and (d) That the granting of the Permit will not be materially detrimental to the District's use of its Right-of-way for flood control, water conservation, or other use under the powers granted to the District by law or otherwise authorized. The Board shall announce its decisions within fourteen (14) days of the filing of the petition heretofore referred to.

Section 26. Notification of the District: Prior to the start of any Encroachment for which notification is a condition of the Permit, the Permittee shall provide such notice to the District employee designated on the Permit. At the option of the Director, the Permittee may be required to provide some or all of the following information in conjunction with the said notification:

- a) Written certification that all materials and equipment needed to complete each phase of the Encroachment will be on hand and ready for use prior to the start of that phase.
- b) Working plans and procedures for the following operations:
 - 1. Safety controls, such as shoring and support of deep excavations.
 - 2. Public interfaces, such as dust and noise control.
 - 3. Diversion and control of the existing and anticipated flows in the affected flood control facilities.
 - 4. Protection of the flood control facilities from damage, including the effects of erosion or other contamination.

- c) Test plans or certification data for critical materials or equipment.
- d) Other plans, procedures, or data as required by the District inspector.

Section 27. Inspection and Acceptance: All Encroachments are subject to monitoring, inspection, and final acceptance by the Director.

Section 28. Security of the Worksite: A Permittee accessing the Right-of-way via a lockable District-maintained gate shall be responsible for relocking the gate so as to preclude unauthorized access to the Right-of-way by others at all times. Similarly, a Permittee opening or removing a District fence or wall section must erect temporary fencing or take other measures to restore or replace the external security barrier. The Permittee may also be required to provide additional internal barricades at the immediate work site, if so directed by the Director. Failure to provide adequate security of the work site may be cause for suspension or cancellation of the Permit pursuant to Section IV.21. The liability for damages resulting from such failure shall be borne by the Permittee in accordance with Section IV.6.

Section 29. Care of Waterways and Facilities: Existing Waterways and Facilities in the vicinity of the Encroachment shall not be disturbed, except as described in the Permit or as otherwise authorized by the Director. Under no circumstance shall an existing Waterway or Facility be breached, broken into, or removed without the specific authorization of the Director. All Encroachments must be planned and controlled so as to avoid the inadvertent contamination of all proximate Waterways and Facilities; such contamination including, but not limited to, the deposition of loose soil, construction debris, or other Rubbish. Permittees planning to work in, or in proximity to, Waterways or Facilities during the rainy season (October 1 through April 15) may be required, at the option of the Director, to prepare and implement a soil erosion control plan and/or a stormwater pollution prevention plan.

Section 30. Blocking of Access: Access Features or Access Roads shall not be removed, blocked, or modified, except as described in the Permit or as otherwise authorized by the Director.

Section 31. Deposition of Groundwater: Groundwater or standing water encountered during Encroachments may not be disposed of by pumping or draining it into a Waterway, except as described in the Permit or as otherwise authorized by the Director. Without such explicit approval, all such water requiring removal must be taken from the Right-of-way and transported to an authorized site for disposal.