

ORDINANCE NO. _____(New Series)

**AN ORDINANCE ESTABLISHIING AN ENCROACHMENT PERMIT PROCESS BY WHICH
USE OF DISTRICT REAL PROPERTY MAY BE ALLOWED**

The Board of Directors of the San Diego County Flood Control District ordains as follows:

Section 1, Purpose: The Board of Directors of the San Diego County Flood Control District are authorized by Section 105-43 of the Water Code Appendix to permit the use of District real property when the use “is in the public interest and will not substantially conflict or interfere with the use of said property by the District for the purpose for which it was acquired.” This Ordinance delegates authority to the Director, Department of Public Works, County of San Diego, or designee, acting on behalf of the District, to issue encroachment permits for use of District real property and sets forth those terms which when included in the permit will ensure the use is in the public interest and will not unreasonably interfere with the purpose for which the property was acquired.

Section 2, Definitions:

As used in this Ordinance:

- (a) “Director” means the Director, Department of Public Works, for the County of San Diego, or designee, acting on behalf of the District.
- (b) “District” means the San Diego County Flood Control District, an independent entity formed and operating under the San Diego County Flood Control District Act, Water Code Appendix section 105-1, et seq.
- (c) “Encroachment” means any landscaping, driveway, private road, fence, building, or any structure or object of any kind or character not particularly mentioned herein, which is placed in, under, or over any portion of District Property.
- (d) “Person” means any individual, corporation, government agency, or any other organization of any type that owns an Encroachment and any contractor or agent of an owner that installs or constructs an Encroachment for an owner.

APPROVED AS TO FORM AND LEGALITY
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BY: Thomas L. Bosworth, Senior Deputy County Counsel

ATTACHMENT A

(e) "Property" means all or any part of any real property or interest in real property, including without limitation, the entire width of any drainage or flowage easement whether or not such entire easement is actually used for the purpose for which it was obtained.

Section 3, Permit Required: No Person shall place, maintain, install, or construct any Encroachment on District Property without first obtaining an Encroachment permit from the Director.

Section 4, Revocable License: All Encroachment permits shall be revocable licenses subject to the obligation to remove, relocate, maintain, and alter the Encroachments in a manner and under conditions required by the Director, in the Director's sole judgment, at the sole cost and expense of the permittee, or owner retaining the permittee where the permittee is merely an agent or contractor of the owner.

Section 5, Defense and Indemnity: The permittee shall agree to indemnify and hold harmless the District, and the District's officers, employees, agents, and representatives from any liability or responsibility for accident, loss, damage to persons or property, regulatory fines or penalties, and costs of any kind or character arising by reason of the work done by the permittee, or the permittee's officers, employees, agents, or representatives. The applicant shall further agree to defend the District, the District's officers, employees, agents, and representatives, against all claims, suits, actions, or proceedings of any kind or character brought against them, arising by reason of the work done by the permittee, or the permittee's officers, employees, agents or representatives, or pay the cost for such defense.

Section 6, Terms & Condition: The Director shall have the authority to condition the issuance of a permit in any manner the Director deems necessary to protect the District's interests and may, as a condition of allowing an Encroachment to remain, require an issued permit to be modified or amended in a manner deemed necessary by the Director. The Director may terminate an Encroachment permit at any time and require the Encroachment be completely removed and the area restored to the condition it was in prior to the Encroachment at no cost to the District.

Section 7, Fees and Deposits: The District shall collect a fee for the issuance of an Encroachment permit and deposits to recover the cost of any engineering analysis, environmental review, or other extraordinary costs incurred to issue the permit or monitor the Encroachment. Whenever feasible, fees and deposits shall be paid prior to the issuance of the permit. In the absence of an established fee or deposit and where determined by the Director to reasonably provide for the recovery of District costs, the District may collect the fees and deposits otherwise charged by the

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County of San Diego for the issuance of a highway encroachment permit pursuant to Title 7 of the San Diego County Code of Regulatory Ordinances for District Encroachment permits.

Section 8, Enforcement: The District's Encroachment permits and this Ordinance may be enforced in the same manner and to the same degree as the County of San Diego enforces encroachments on highways pursuant to Title 7 of the San Diego County Code of Regulatory Ordinances.

Section 9, Enactment Clause: This ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

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