

## RESOLUTION NO. 2019-1

### RESOLUTION OF THE LINNE COMMUNITY SERVICES DISTRICT REGULATING CULVERT AND ROADWAY MAINTANCE AND REPAIR AND ENCROACHMENTS ON DISTRICT PROPERTY

The following resolution is hereby offered and read:

**WHEREAS**, the Linne Community Services District desires to establish a road policy defining the responsibilities and duties of property owners relating to culvert and roadway maintenance and encroachments on district maintained right of ways in order to preserve and protect the integrity and safety of District roadways.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Board of Directors of the Linne Community Services District as follows:

#### **Section 1. Purpose**

The purposes of this policy are: (1) to establish the responsibilities and duties of property owners regarding installation, improvement, maintenance and repair of the driveways, culverts and landscaping 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 increased 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 driveway or culverts and landscaping located in an encroachment within a District roadway easement in order to preserve and protect the integrity and safety of District roadways.

#### **Section 2. Authority**

This policy is adopted to provide regulations and standards over District roadways pursuant to Government Code Sections 61060(b), 61100(l) and 61103. 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 (Streets & Highways 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 (Streets & Highways 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 (Streets & Highways 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 (Streets & Highways 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 (Streets & Highways Code § 1487).

### **Section 3. Scope and Applicability**

This policy applies to all roadways, easements, right-of-ways and appurtenances thereto under the control, authority, ownership, and/or jurisdiction of the District, and to all existing properties and new properties to be developed. All encroachments shall satisfy all applicable provisions of this policy, including obtaining any permits and payment of any fees as may be required by District policy.

### **Section 4. Definitions and Context**

As used in this policy, 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 District, 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. "Defective driveway" means a driveway that, in the judgment of the District, is in a condition such that continued use of the driveway is likely to interfere with the integrity and maintenance of District roadways.
- D. "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."
- E. "District" means Linne Community Services District.

F. "District Property" includes all of the County roadways 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.

G. "Driveway" means the entrance of a private road or driveway which is used by vehicles to access real property from District Property.

H. "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.

I. "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.

J. "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.

K. "Owner" means any person owning real property within the District where a encroachment exists or is to be installed either on the property or within any roadway maintained by the District.

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

M. "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.

N. "Repair Work" means maintenance as specified by the District.

O. "Right-of-Way(s)" Means the property which the District has the right to use for street, road or related purposes pursuant to a dedication, deed, easement, resolution, deed or other legal means, and includes both the traveled and untraveled portions of

said property. Generally, includes the main unpaved and paved roadway surface and three (3) feet on each side of the roadway.

P. "Roadway" means any unpaved or paved road, street or roadway owned by or dedicated to the County or the District located within the boundaries of District and maintained by the District.

### **Section 5. District Responsibility**

The District is responsible for roadway maintenance and weed abatement. The District levies and collects assessments against benefiting parcels of land for the purpose of maintaining and servicing, and providing weed abatement along, the roadways within the District.

### **Section 6. Owner's Responsibility**

Owners are responsible for management of their own property and all encroachments onto, under or over District Property.

### **Section 7. Owner's Duty to Maintain and Repair Driveways and Culverts**

An owner shall have the duty to maintain and repair any driveways and culverts on such owner's real property, or located within any roadway or right-of-way easement dedicated to the County and maintained by the District abutting such owner's property, in order to protect against deterioration of the base or edge of the roadways.

### **Section 8. Access to Real Property from District Roadways**

Owners are responsible for providing a smooth transition from the driveway to District roadways. Driveway transitions should be in a form that will not damage the edge of the roadway. It is unlawful for any person to construct encroachments into a District roadway. The District reserves the right to remove or abate, at the expense of the owner, any encroachments which impede road maintenance or repair pursuant to the procedures of Sections 1480 through 1496 of the Streets and Highways Code. In those areas where the District has determined that a driveway transition has caused material damage to District roadways, the District may, but is not obligated to, attempt to repair that portion of the roadway and/or right-of-way easement affected by the driveway transition. If the District has repaired that portion of the roadway and/or right of way easement affected by the driveway transition, it is the responsibility of the owner to maintain the driveway transition so as to not do further damage to District roadways.

### **Section 9. Weed Abatement**

The District will provide weed abatement up to three feet from the existing roadway.

## **Section 10. Right-of-Way Clearance Requirements**

Except for existing oak trees, right of ways shall be maintained free of all encroachments by property owners, including but not limited to landscaping or other vegetation, or fences or other obstructions which would restrict the passage of vehicles, pedestrians and equestrians along the District right-of-ways. Property owners are allowed to plant ground cover, or cover the area with mulch or other material which will retard soil erosion, provided that said ground cover, mulch or other material can be walked or ridden upon. Property owners shall also maintain a vertical clearance sixteen (16) feet in height over District right-of-ways. These clearance requirements shall apply to both sides of all District roadways. Under this policy, property owners may not place or maintain any obstructions within the clearance areas. The District may, but is not obligated to, remove or trim any trees or landscaping located partly or wholly within a right-of-way and trim any trees or landscaping located wholly outside a right-of-way which encroach on these right-of-way clearance requirements. If planting and/or landscaping impacts road safety and/or visibility, the property owner is responsible for remediation of the hazard.

## **Section 11. Notice to Repair**

When the District has actual notice of the existence of a defective culvert, an encroachment obstructing drainage of the culvert, any activity causing deterioration of the base of the roadways or other encroachment caused by the activities of the owner of property adjacent to such roadway, the District may, but is not obligated to, 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 District may also give such notice to the person in possession of the real property, in addition to the notice given to the property owner. The notice shall include 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 District 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, at the owner's expense, through a contractor selected by the District.
- E. A notice stating that if the owner or the owners designee disagrees with the determination of the District 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.

### **Section 12. 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 District, 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 District directing the repair work. A written notice of the decision of the Board of Directors shall be mailed to the owner of the property.

### **Section 13. 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 District, then such work shall be commenced within thirty (30) days from receipt of written notice of the decision confirming such order.

### **Section 14. 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 District may 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 property owner detailing the costs incurred by the district and payable by the property owner, which invoice shall be due and payable within 30 days after mailing.

### **Section 15. 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 Resolution 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 San Luis Obispo County a certificate declaring the amount of the service charge, penalties due and 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 San Luis Obispo 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.

### **Section 16. Civil Liability for Injuries**

A property owner who fails to repair a defective culvert or 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 policy shall bear the civil liability for any personal injury or property damage arising out of failure to repair such condition.

### **Section 17. Severability**

If any section, subsection, sentence, clause, or phrase of this resolution is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of remaining portions of this resolution. The Board of Directors hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one of more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

### **Section 18. Effective Date**

This resolution shall take effect immediately.

Upon motion of Director \_\_\_\_\_, seconded by  
Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

The foregoing Resolution is hereby adopted.

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President of the Board,  
Linne Community Service District

District Secretary

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