

ORDINANCE NO. 2023-01

AN ORDINANCE OF THE DIABLO COMMUNITY SERVICES DISTRICT REPEALING AND REPLACING ORDINANCE NO. 2002-1 AND CHAPTER 6-6

WHEREAS, the Diablo Community Services District (“District” or “DCSD”) provides security and road maintenance services to the Diablo community pursuant to the Community Services District Law (Gov. Code, § 61000 *et seq.*); and

WHEREAS, the District is empowered by Government Code Section 61060(b) to adopt, by ordinance, and enforce rules and regulations for the administration, operation, and use and maintenance of the facilities and services listed in Government Code Section 61100, including the maintenance of streets, roads, and public rights-of-way (Gov. Code, § 61100(*l*)); and

WHEREAS, pursuant to Government Code Section 61103, a district that maintains roadways and public rights-of-way, such as the District, shall have certain powers that are otherwise granted to cities and counties by the Streets & Highways Code and Vehicle Code, which include the authority to manage stormwater and encroachments, as defined herein, and to remove encroachments and recover the costs associated with removal of encroachments (see Streets & Highways Code, §§ 964, 1480 – 1496); and

WHEREAS, the District adopted an encroachment ordinance in 2001 which is now over 22 years old; and

WHEREAS, the streets maintained by the District are narrow, there are no sidewalks adjacent to the streets, and the streets are used by pedestrians, children, cyclists, golf carts and other mechanical and personal modes of transportation and play, including emergency vehicles, so it is imperative that any “encroachment” on or damage to a DCSD-Maintained Street is cleared away quickly because it could result in inconvenience or dangerous conditions to Diablo residents, including but not limited to increased response times for emergency vehicles; and

WHEREAS, the District desires to update the encroachment provisions in its ordinance code in order to clarify certain inconsistencies and the process for the District’s handling of encroachments; and

WHEREAS, the District held a study session at its February 14, 2023 meeting to obtain input from Directors and the public on proposed updates to the encroachment ordinance; and

WHEREAS, this ordinance was introduced at the District’s April 11, 2023 meeting and reintroduced with further amendments at its November 13, 2023 meeting; and

WHEREAS, repealing and replacing Chapter 6-6 is not a “project” under the California Environmental Quality Act (“CEQA”) Guidelines section 15378(b)(2) and (b)(5) because it is an administrative and organizational activity that will not result in direct or indirect environmental impacts, and even if it is a “project,” it can be seen with certainty that it will not result in an impact to the environment pursuant to CEQA Guidelines section 15061(b)(3) because it does not involve or authorize any physical construction or other action that would impact the environment.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE DIABLO COMMUNITY SERVICES DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The above recitals are true and correct and are incorporated herein.

SECTION 2: Ordinance No. 2023-01 attached hereto as Exhibit A is hereby adopted, and Ordinance

No. 2001-01 and Chapter 6-6 of the Ordinance Code of the Diablo Community Services District are hereby repealed. Exhibit A shall replace the existing Chapter 6-6 and shall be codified in the District's Ordinance Code. No other sections of this Ordinance No. 2023-01 shall be codified.

SECTION 3: The Board of Directors finds the adoption of this Ordinance is not a "project" under the California Environmental Quality Act ("CEQA") Guidelines section 15378(b)(2) and (b)(5) because it is an administrative and organizational activity that will not result in direct or indirect environmental impacts, and even if it is a "project," it can be seen with certainty that it will not result in an impact to the environment pursuant to CEQA Guidelines section 15061(b)(3) because it does not involve or authorize any physical construction or other action that would impact the environment.

SECTION 4: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This Board of Directors hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 5: This Ordinance No. 2023-01 shall take effect and be in force 30 days from the date of its passage; and, before the expiration of 15 days after its passage, it or a summary of it shall be published in a newspaper of general circulation in Contra Costa County.

Passed, approved, and adopted by the Board of Directors of the Diablo Community Services District on this December 11, 2023 by the following vote:

AYES: Urbelis, Cox, Lorenz, Slavonia

NOES:

ABSTAIN:

ATTEST:

Kathy Urbelis, Board President

EXHIBIT A

Chapter 6-6 ENCROACHMENT ORDINANCE

6-6-1 Authority.

- a. The District provides security and road maintenance services to the Diablo community pursuant to the Community Services District Law (Gov. Code, § 61000 *et seq.*).
- b. The District is empowered by Government Code Section 61060(b) to adopt, by ordinance, and enforce rules and regulations for the administration, operation, and use and maintenance of the facilities and services listed in Government Code Section 61100, including the maintenance of streets, roads, and public rights-of-way (Gov. Code, § 61100(l)).
- c. Pursuant to Government Code Section 61103, a district that maintains roadways and public rights-of-way, such as the District, shall have certain powers that are otherwise granted to cities and counties by the Streets & Highways Code and Vehicle Code, which include the authority to manage stormwater and encroachments, as defined herein, and to remove encroachments and recover the costs associated with removal of encroachments (see Streets & Highways Code, §§ 964, 1480 –1496).

6-6-2 Findings and Purpose.

- a. That DCSD-Maintained Streets are narrow with no adjacent sidewalks, and are used by pedestrians, children, and cyclists and other mechanical and personal modes of transportation and play.
- b. DCSD-Maintained Streets are the only access for emergency vehicles to service property and persons within Diablo.
- c. Encroachments onto DCSD-Maintained Streets may result in dangerous conditions or severe inconvenience to property owners and residents, including but not limited to increased response times for emergency vehicles or the failure of a DCSD-Maintained Street.
- d. It is the responsibility of a property owner to remove any encroachment onto a DCSD-Maintained Street.
- e. Encroachments that pose a safety threat to persons or the integrity of DCSD-Maintained Streets or prevents emergency vehicle access will be immediately removed by the DCSD at the property owner's expense.
- f. DCSD does not have a Public Works Department and therefore it is necessary for DCSD to contract with independent contractors to remove encroachments should a property owner fail to do so, the cost of which shall be borne by the property owner.

6-6-3 Definitions.

- a. **Encroachment** is an obstruction that prevents full or partial access to a DCSD-Maintained Street or threatens the integrity of the DCSD-Maintained Street.

Encroachments include, but are not limited to, any structures such as signs, fences, walls, or guardrails; or any vegetation, such as trees, shrubs, or other growing materials; or landscape materials such as rocks, irrigation materials, or bark; or water or mud within three feet of the DCSD-Maintained Street.

- b. **DCSD-Maintained Streets** means those streets and bridges located within Diablo that are maintained and secured by DCSD pursuant to the DCSD 1969 Formation Resolution.

6-6-4 Violations and Removal of Encroachment.

- a. No property owner shall permit an encroachment to lie on, damage or impede a DCSD-Maintained Street. If a property owner's property contains an encroachment or if a property owner is responsible for placement, accidental or otherwise, of an encroachment onto a DCSD-Maintained Street, the property owner shall remove the encroachment upon notification by any member of the Board of Directors, General Manager, or Sheriff within 10 days. The 10-day period to remove the encroachment may be reduced to 5 days if, after notice, the property owner does not dispute the existence of the encroachment but still fails to remove it. The property owner is responsible for encroachment removal costs.
- b. If an encroachment poses a safety threat to persons or DCSD-Maintained Streets or prevents timely emergency vehicle access, as determined by the Board of Directors, General Manager, or Sheriff, the DCSD will immediately contact a third-party contractor to remove the encroachment and mitigate the threat to the DCSD-Maintained Street. The property owner is responsible for any and all costs associated with the encroachment removal and mitigation, which shall be paid to the District within 30 days of its removal of the encroachment.
- c. Notwithstanding any other provision of this ordinance to the contrary, the District hereby adopts the provisions of California Streets and Highways Code Sections 1480 through 1496 relating to the removal of encroachments, and the District's ability to impose penalties or forfeitures and recover the costs associated with removal of encroachments.