

# Staff Report

for the Board of Directors Meeting of August 9, 2017

**TO:** Board of Directors  
**FROM:** Gary D. King, PE, PhD. Engineering Manager  
**DATE:** August 1, 2017  
**SUBJECT:** Revisions to Section 14 of the District Rules and Regulations

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***ENGINEERING***

**RECOMMENDATION:**

Approve revisions to Section 14 as attached to this staff report as recommended by the Administrative Practices Committee on March 7, 2017, and the Engineering Committee on June 20, 2017.

**BACKGROUND:**

Staff has revised a portion of Section 14 to make the section more clear and align with the current management of encroachments. These changes will allow staff to better manage and implement encroachments for the District.

Staff has made significant changes to the document for clarity and alignment with current management. The changes were significant, and in lieu of underlined changes, we have indicated the old section in a block below the new section on the policy such that comparisons could be made.

The philosophy toward management of the culverts has not significantly changed. However, the new policy clarifies the mechanics and responsibilities of culverts with the owners of these culverts. We believe these changes will assist in our effort to improve movement of water through the canal system to our customers.

It is the recommendation of staff to approve the following changes to the rules and regulations.

**BUDGETARY IMPACT:**

No budget impact

GDK

**SECTION 14**  
**ENCROACHMENTS TO DISTRICT FACILITIES**

**14.1 SUPPLEMENTAL DEFINITIONS**

**14.1.1 Encroachments**

Include but are not limited to, buildings, bridges, culverts, fences, underground or overhead utilities, roadways, landscaping, and/or grading placed within a District facility or right of way, or which become so close or near to a District facility or right of way as to interfere or potentially interfere with the District's performance of its responsibilities.

eff. 2/26/86; rev. 1/24/17

**14.01.01 Physical Encroachments**

Includes, but is not limited to, structures such as buildings, bridges, culverts, fences, pipelines, underground or overhead wires, roads, landscaping, which either cross, or lie within District rights of ways, or which become so close or near to District rights of ways, as to unreasonably interfere or potentially interfere with the District's operation of its facilities or with necessary improvements or reconstruction of its facilities.

eff. 2/26/86

**14.1.2 Authorization**

A written approval or agreement authorizing the construction, installation, and existence of an encroachment as requested by the landowner(s) which is subject to the terms and provisions; customarily in the form of an Encroachment Permit.

eff. 6/11/03; rev. 1/24/17

**14.01.02 Authorization**

Authorization for encroachment construction issued by the General Manager allowing the construction of a physical encroachment subject to the terms and provisions of the authorization.

eff. 6/11/03

### **14.1.3 Encroachment Permit**

A permit issued by the District authorizing the construction, installation, and existence of an encroachment, subject to the terms and provisions of the permit.

eff. 6/11/03; rev. 1/24/17

#### **14.01.03 Encroachment Permit**

A permit issued by the General Manager authorizing the existence of a permanent physical encroachment, subject to the terms and provisions of the permit.

eff. 6/11/03

### **14.1.4 Permittee**

Any person issued an encroachment permit by the District, and the successors, assigns, heirs and beneficiaries of that property benefitted by the authorized encroachment.

#### **14.01.04 Permittee**

Any person issued an encroachment permit by District.

### **14.1.5 Unauthorized Encroachment**

An encroachment for which an encroachment permit or written authorization was not issued.

#### **14.01.05 Unauthorized Physical Encroachment**

A physical encroachment for which an encroachment permit or authorization has not been issued.

## **14.2 ENCROACHMENT AUTHORIZATION**

### **14.2.1 Application for Encroachment**

Prior to the construction or installation of a new encroachment or replacement of an existing encroachment, the property owner(s) shall submit the Encroachment Construction Authorization Application Form (Form 14-A) to the District for review and approval.

rev. 1/24/17

### **14.2.2 Review of Encroachment Application**

The District shall review the Encroachment Construction Authorization Application Form for completeness. The District shall be permitted to impose those terms and conditions which it deems necessary to protect its facility and right of way.

### **14.2.3 Issuance of Encroachment Permit**

The encroachment permit shall provide for the construction, installation, or replacement of an encroachment, and existence of an encroachment, as the case may be, all in conformance with the terms and provisions of the authorization. The existence of an encroachment is subject to the conditions, terms, and provisions set forth in the permit (Form 14-B) and the Regulations of the District. An approved encroachment permit shall be signed by each of the property owner(s) and the District's General Manager. Upon full execution, the encroachment permit will be recorded with the office of the County Recorder for the county in which the encroachment is to be located. Upon recording of the encroachment permit, the District will issue a construction authorization letter detailing any additional District requirements for construction or installation of the project addressed in the encroachment permit. Encroachments shall follow Districts standard details or an approved design submitted to the District by the Property owner(s). Encroachment Permits shall be considered "covenants that run with the land" and the terms and conditions thereof, together with the District policies contained in this Chapter 14, shall be binding on all successors, assigns, heirs, and beneficiaries of the property benefitted by the authorized encroachment.

eff. 6/11/03; rev. 1/24/17

#### **14.02.01 Preconstruction Requirements**

Prior to the construction or installation of any physical encroachment, the person causing the construction, or installation of a physical encroachment, shall first make application to obtain authorization from the District (Form 14-A).

#### **14.03.01 Issuance**

The General Manager may issue an encroachment permit following the construction and installation of a physical encroachment, all in conformance with the terms and provisions of the authorization. The encroachment permit shall provide for the existence of the physical encroachment subject to the conditions, terms and provisions set forth in the permit and the Regulations of the District. See Form 14-B.

eff. 6/11/03

#### **14.2.4 Construction Work**

Construction or installation of any encroachment shall be performed in accordance with District approved plans, standard details, and specifications, subject to District approval. The District reserves the right to inspect the construction or installation of an encroachment at any time. Applicant shall assume and pay all costs and expense of constructing, inspecting, and installing the encroachment and shall remove all debris in the area or ground in which the encroachment exists, in a manner satisfactory to the District. If applicant fails to complete construction or installation of the encroachment to the District's specifications, requirements, and satisfaction within established time frames, the District may, at its discretion; either complete the construction or installation of the encroachment or stop installation and cause the removal of the proposed encroachment. Should the District be required to complete construction, installation, or removal of the encroachment, the permittee shall bear all cost and expense for labor, materials, and equipment associated with such work.

eff. 6/11/03; rev. 1/24/17

#### **14.02.02 Construction Work**

The construction and installation of any physical encroachment shall be performed in accordance with District approved plans and specifications and subject to the approval of the General Manager. The District reserves the right to inspect the installation or construction at any time. Applicant shall assume and pay all costs and expense of constructing and installing the physical encroachment and shall clean the area or ground in which the physical encroachment exists, in a manner satisfactory to the District. Should the applicant fail to complete construction and installation of the physical encroachment to the District's satisfaction and approval, then the District may, at its option, either complete the construction and installation of the physical encroachment, or cause the removal of the physical encroachment. Should this be necessary, the applicant shall bear all cost and expense for labor, materials, and supplies associated with such work.

eff. 6/11/03

#### **14.2.5 Water Outage Necessary for Construction**

Prior to commencing construction and installation of an encroachment which shall lie within, or cross any District facility or right of way, which may cause a muddy water condition, fluctuation, or interference in any manner with the flow of District water, the applicant shall request District, in writing, for an interruption in the flow of water, commonly referred to as a “water outage.” District may arrange with the applicant to provide a water outage at such time as is convenient to the District. Applicant shall provide District with at least 14 calendar days advance notice of the need for a water outage so that the District may plan for and notify affected customers of an outage. If District determines the outage may be significant to its operations, the District can at its discretion delay an outage until after irrigation season. If, in the District’s opinion, the outage will cause a significant cost to the District, the applicant will be required to pay such costs.

rev. 1/24/17

#### **14.02.03 Water Outage Necessary for Construction**

Prior to commencing construction and installation of any physical encroachment which shall lie within, or cross over District facilities to such an extent as to cause a muddy water condition, fluctuation, or interference in any manner with the flow of water in District facilities, applicant shall request District, in writing, for an interruption in the flow of water through District facilities, commonly referred to as a “water outage.” District may arrange with the applicant to provide a water outage at such time as is convenient to the District. Applicant shall provide District with at least 10 days advance notice of his plan to construct, or install a portion of the physical encroachment within District facilities causing the interruption, or interference with water flow, so that the District may plan for an outage. If, in the District’s opinion, the outage will cause a significant cost to the District, the applicant will be required to pay such costs.

#### **14.2.6 Maintenance of Encroachment**

It shall be permittee's obligation to maintain, repair, operate and replace the encroachment at all times at said permittee's sole cost and expense. All maintenance, operation, repairs and replacement work performed upon the encroachment shall be conducted in a manner and to a condition satisfactory to the District. The District can require permittee, at permittee's sole expense to perform maintenance, repair, reconstruction or replacement of the encroachment necessary to ensure the District's ability to perform its responsibilities. Should permittee fail for any reason to perform the task(s) prescribed by District, District may make such repairs, replace, or remove the encroachment and all associated expenses and costs shall be paid by the permittee.

eff. 2/26/86; rev. 6/11/03; rev. 1/24/17

#### **14.03.02 Maintenance of Physical Encroachment**

It shall be the applicant, or permittee's obligation to maintain, repair, operate and replace the physical encroachment at all times at said applicant's, or permittee's sole cost and expense. All maintenance, operation, repair and replacement work performed upon the physical encroachment shall be conducted in a manner and to a condition satisfactory to the General Manager. If, in District's sole discretion, improvements, expansion or reconstruction of District facilities is required, the permittee, at permittee's sole expense shall be required to improve, reconstruct or remove the encroachment facilities as required to permit the performance of the District work. Should the permittee neglect, fail to promptly make repairs, or perform maintenance at permittee's sole cost, District may make such repairs, or replacement, or perform such maintenance as is necessary, or remove the physical encroachment and the cost shall be paid by the permittee.

eff. 2/26/86; rev. 6/11/03

## **14.2.7 Revocation**

District may revoke or cancel the encroachment permit upon giving notice to the permittee of District's intent to revoke the permit and an opportunity to be heard regarding the cause of revocation. Should the permittee fail to file a written request for hearing with District regarding the proposed revocation within 10 days of the date of District's notice of intent to revoke; the permit shall be revoked and have no further force or effect. Should the permittee submit a timely written request for hearing the District shall set a time and place for the hearing and notify the permittee thereof. Within 10 days of any hearing, the District shall notify the permittee in writing of its decision to revoke the permit or maintain the permit, subject to those terms and conditions which the District deems necessary.

rev. 1/24/17

### **14.03.03 Revocation**

District may revoke or cancel the encroachment permit upon giving notice to permittee of District's intent to cancel, or revoke the permit and upon giving the permittee an opportunity to be heard regarding the cause of revocation or cancellation. Should permittee fail to file a written request for hearing with District regarding the proposed revocation or cancellation of permit, within 10 days of District's providing notice of District's intent to cancel or revoke the permit; then such permit shall be deemed revoked or cancelled. Should permittee file a written request for a hearing with District, then District shall set a time and place for the hearing and provide notice to permittee. District shall, within 10 days subsequent to the hearing held regarding cancellation or revocation, provide written notice to permittee of District's decision to revoke or cancel the permit or to maintain the permit together with the conditions of the permit in full force and effect.

### **14.2.8 Immediate Threat to District Facilities**

Should the District determine that any encroachment or the condition thereof poses an immediate threat to a District facility or right of way, the District shall notify the permittee of measures necessary to cure the immediate threat. If the permittee refuses or is unable for any reason to undertake the measures prescribed by the District within the indicated timeline; the District may take all actions necessary to cure the immediate threat, at the sole cost and expense of the permittee.

rev. 1/24/17

#### **14.04.02 Immediate Threat to District Facilities**

Should the District determine that the unauthorized physical encroachment is an immediate threat to the safe operation of District facilities, the District shall exercise due diligence to determine the owner of the unauthorized physical encroachment and upon making such determination, District shall exercise due diligence to notify the owner to immediately cause the removal of the unauthorized physical encroachment. Should the District determine that the owner of the unauthorized physical encroachment refuses to remove such encroachment, then the District may assess a penalty charge to be levied against the owner of the encroachment and the District may either remove, or cause the removal of the unauthorized physical encroachment, at the sole cost and expense of its owner. Should District be unable to notify owner of the need to immediately remove, or cause the removal of the unauthorized physical encroachment, District may remove, or cause the removal of the unauthorized physical encroachment, at the sole cost and expense of owner.

eff. 2/26/86; rev. 6/11/03

### 14.3 UNAUTHORIZED ENCROACHMENT

#### 14.3.1 Notification and Penalty

District shall exercise due diligence to determine the owner(s) of an unauthorized encroachment (“owner(s)”). Upon such determination, District shall notify the owner(s) in writing of the owner’s need to make an application for the issuance of an encroachment permit, as deemed appropriate by the District. Notification shall be delivered by District to the owner of the unauthorized encroachment by registered mail. If, after 14 calendar days from the date the District mailed notification to the owner, the owner has not made proper application to the District, then the District may remove or replace the unauthorized encroachment at the owner’s sole cost and expense. Upon removal or replacement, District shall send a final bill including staff time, for removing or replacing the encroachment to the owner(s). This bill is to be paid within 30 days of invoice date or payment arrangements made.

eff.2/26/86; rev.5/23/07; rev.1/24/17

#### 14.04.01 Notification and Penalty

District shall exercise due diligence to determine the owner of the unauthorized physical encroachment and upon such determination, District shall notify the owner of the unauthorized physical encroachment, in writing, of the owner’s need to make an application for the issuance of either an authorization and/or an encroachment permit, as deemed appropriate by the District. Such notification shall be delivered by District to the owner of the unauthorized physical encroachment by registered mail, return receipt, and should 14 days expire from the time the District deposits notification to the owner in the mails without the owner making proper application to the District, then the District may remove or cause the removal of the unauthorized physical encroachment at the owner’s sole cost and expense. Upon removal, District shall send a bill for services rendered in removing the encroachment to the owner of the encroachment to be paid within 30 days of District’s mailing the bill for services rendered. Should the District determine that the owner of the unauthorized physical encroachment refuses to either remove the encroachment, or make proper application, then the District may assess a penalty of \$100.00 against the owner of the unauthorized encroachment in addition to any other remedies provided herein.

In the event that an encroachment permit, or similar agreement, is obtained and recorded with the title to the affected parcel of land, the District may participate in the cost of the removal and/or replacement of a culvert.

In addition, in cases where the owner of an unauthorized culvert refuses to remove the unauthorized obstacle, or does not respond to the District's Notice, and, in the opinion of the General Manager, removal of the culvert is not practical, the District shall remove and replace the culvert in accordance with District Standards at the owner's sole cost and expense; in that case, the District shall send a bill for material, equipment and services to the owner of the encroachment.

eff. 2/26/86, rev. 5/23/07

### **14.3.2 Conditions for District Replacement**

In cases where the owner of an unauthorized encroachment either refuses or delays to remove the encroachment or does not respond to the District's notice and the removal severs the sole access to a developed property or other public health requirements for the property. The District, as approved by the General Manager, shall replace the offending encroachment in accordance with the District's standards at the owner's sole cost and expense.

rev.1/24/17