

**GROVELAND COMMUNITY SERVICES DISTRICT**

**ORDINANCE NO. 03B-10**

**ORDINANCE OF THE BOARD OF DIRECTORS OF THE GROVELAND  
COMMUNITY SERVICES DISTRICT REGULATING ENCROACHMENTS  
UPON DISTRICT PROPERTY**

Be it ordained by the Board of Directors of the Groveland Community Services District as follows:

Purpose and Policy.

This Ordinance regulating encroachments upon District Property sets forth the procedures to be followed by a member of the public to obtain permission from the District to access District Property for the purpose of gaining access to other property, or for the purpose of constructing and/or maintaining any improvements, structures or objects which are partially located on District Property, easements, or rights of way including, but not limited to landscaping, building extensions, fences, retaining walls, culverts, pipelines, or other structures or improvements. This Ordinance also specifies the criteria that the District will utilize in issuing Encroachment Permits for authorized uses of District Property which do not interfere with the District's use of such property for the provision of public services.

The District's Operational Policies at Section 503 are hereby made a part of this Ordinance and incorporated herein by this reference.

- 1.0 Table of Contents**
- 1.1 Definitions.**
- 1.2 Encroachments--Restricted.**
- 1.3 Exemptions.**
- 1.4 Permit application--Information required.**
- 1.5 Permit fee.**
- 1.6 Performance security required--Amount.**
- 1.7 Indemnification.**
- 1.8 Insurance.**
- 1.9 Permit--Refusal or revocation.**
- 1.10 Delay or defects in construction or installation of improvements.**
- 1.11 Costs of completion and/or repair deducted from performance security.**
- 1.12 Performance security--Refund.**
- 1.13 Appeal.**
- 1.14 Violation.**

## **1.1 Definitions.**

- A. "District Property" includes all or any part of District-owned property, rights of way and/or easements.
- B. "Encroach" means to construct, erect or maintain in, over or under any District public place, 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 obtain access over District Property for permissible purposes.
- C. "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 to obtain access over District Property for permissible purposes.
- D. "Excavation" means the movement or removal of earth, rock, pavement or other material in, on or under the ground. The term includes, but is not limited to auguring, backfilling, digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and tunneling. Both an "Excavation" and the products of such an Excavation located on District Property shall constitute an "Encroachment."

## **1.2 Encroachments--Restricted.**

It is unlawful for any person to undertake any excavation or place an encroachment in, under or over any District Property whether or not currently improved, except in the manner and mode provided in this Ordinance. An Encroachment Permit is required to encroach upon any portion of District public property.

The District will issue Encroachment Permits for authorized uses of District Property which do not interfere with the District's use of such property for the provision of public services. Such Encroachment Permits only permit limited access to District Property for temporary periods of time.

## **1.3 Exemptions.**

The provisions of this Ordinance shall not apply to work done by any person performing work for the District at its request.

## **1.4 Permit application--Information required.**

A District resident or property owner within the District must complete the District's form of Application for Encroachment Permit and receive an Encroachment Permit from the District in the following circumstances: (1) whenever a resident or property owner desires to install or construct physical improvements, including but not limited to landscaping, fencing, retaining walls, culverts, bridges, pipelines, or other structures or improvements on District Property; (2) whenever a District resident or property owner desires to secure temporary access over District Property in order to access other property; (3) whenever a District resident or property owner desires to excavate, or deposit the displaced soil from an excavation on District Property. The form of Application for Encroachment Permit is attached hereto, marked Exhibit \_\_\_ and incorporated herein by this reference. The Application requires the following information:

- A. Name and address of the applicant, the owner or other person responsible for the proposed encroachment, and the contractor or other person responsible for installing or constructing any physical improvements upon District Property; actually making the proposed encroachment;
- B. Location of the encroachment;
- C. Nature of the encroachment, whether for the purposes of constructing and/or maintaining structures or improvements on District Property, utilizing District Property to secure access to other property;
- D. Estimated time for commencement and completion of any construction work or installation of improvements on District Property; and/or duration of access across District Property to obtain access to other property;
- E. Site plans showing relationship of proposed improvements to be installed on District Property;
- F. Other information as may be required by the District;
- G. Signature of the applicant, property owner, and contractor.

#### **1.5 Permit fee.**

The fees for processing and reviewing the permit application and conducting the necessary inspections shall be established by resolution of the Board of Directors.

#### **1.6 Performance security required--Amount.**

- A. Prior to issuance of any encroachment permit authorizing construction and/or installation of any structure or improvement on District Property, such an applicant shall be required to deposit performance security with the District in the form of a performance bond, irrevocable letter of credit, or cash or cashier's check in the amount

of seventy-five percent (75%) of the estimated cost of the work to be performed pursuant to the encroachment permit. The estimated cost of the work shall be determined in writing by a licensed engineer or licensed contractor and is subject to the approval of the District. The security shall guarantee the faithful performance of all terms and conditions of the permit.

- B. If the amount of security is inadequate to restore or repair any damage to District property caused by incomplete or improper work done by the Permittee, the District may require Permittee to deposit additional security in an amount sufficient to pay the costs of any restoration of or repair to District Property. Failure by the Permittee to post additional security required by the District may result in revocation of the Encroachment Permit.
- C. The District, in its sole discretion, may waive or vary the security required by this Section for minor encroachments or utility installations.

### **1.7 Indemnification.**

The Permittee shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them from and against all actions, liability, damages, claims, losses or expenses of every type and description to which it may be subjected or put to by reason of or resulting from: (1) the performance of, or failure to perform, the work or any other obligations of the Encroachment Permit by the Permittee, any subcontractor or the Permittee's agents or employees; (2) any alleged negligent act or omission of the Permittee, any subcontractor, the Permittee's agents or employees, in connection with any acts performed or required to be performed pursuant to the Encroachment Permit; (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of the Permittee, Permittee's agents or employees in carrying out the provisions of the Encroachment Permit. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

### **1.8 Insurance.**

If, in the opinion of the District, the construction or installation work proposed in any permit application or the proposed use of District Property entails any undue risk of injury, death, or damage to any member of the public, the District may, prior to issuing such permit, require the applicant to provide proof of liability insurance in the amount specified by the District, naming the District, its employees, officers, officials, and volunteers as additional insureds.

Any applicant for an encroachment permit allowing construction or installation work on District Property shall certify that it, or its licensed contractor will have in place workers' compensation coverage for any and all employees or contractors performing such work, or will be self insured for such purposes.

of seventy-five percent (75%) of the estimated cost of the work to be performed pursuant to the encroachment permit. The estimated cost of the work shall be determined in writing by a licensed engineer or licensed contractor and is subject to the approval of the District. The security shall guarantee the faithful performance of all terms and conditions of the permit.

- B. If the amount of security is inadequate to restore or repair any damage to District property caused by incomplete or improper work done by the Permittee, the District may require Permittee to deposit additional security in an amount sufficient to pay the costs of any restoration of or repair to District Property. Failure by the Permittee to post additional security required by the District may result in revocation of the Encroachment Permit.
- C. The District, in its sole discretion, may waive or vary the security required by this Section for minor encroachments or utility installations.

### **1.7 Indemnification.**

The Permittee shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them from and against all actions, liability, damages, claims, losses or expenses of every type and description to which it may be subjected or put to by reason of or resulting from: (1) the performance of, or failure to perform, the work or any other obligations of the Encroachment Permit by the Permittee, any subcontractor or the Permittee's agents or employees; (2) any alleged negligent act or omission of the Permittee, any subcontractor, the Permittee's agents or employees, in connection with any acts performed or required to be performed pursuant to the Encroachment Permit; (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of the Permittee, Permittee's agents or employees in carrying out the provisions of the Encroachment Permit. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

### **1.8 Insurance.**

If, in the opinion of the District, the construction or installation work proposed in any permit application or the proposed use of District Property entails any undue risk of injury, death, or damage to any member of the public, the District may, prior to issuing such permit, require the applicant to provide proof of liability insurance in the amount specified by the District, naming the District, its employees, officers, officials, and volunteers as additional insureds.

Any applicant for an encroachment permit allowing construction or installation work on District Property shall certify that it, or its licensed contractor will have in place workers' compensation coverage for any and all employees or contractors performing such work, or will be self insured for such purposes.

## **1.9 Permit--Refusal or revocation.**

- A. Any application for an encroachment permit may be denied, and any encroachment permit may be revoked, by written order of the General Manager of the District, effective immediately, a copy of which shall be mailed to the Applicant/Permittee at the addresses specified in the permit, upon any one or more of the following grounds:
1. Violation of any of the provisions of this Ordinance;
  2. Misrepresentations of any material fact in the application;
  3. Violation of the terms or conditions of the permit;
  4. Failure to provide sufficient performance security, or to increase the performance security provided when requested by District.
- B. Any encroachment permit may be revoked at any time, without cause, by resolution of the Board of Directors adopted after mailing a notice of intention to revoke the permit to the Permittee at the address specified in the permit at least ten days prior to the adoption of the resolution.

## **1.10 Delay or defects in construction or installation of improvements.**

If any work to be constructed or improvements to be installed on District Property constituting the encroachment are not completed within the time allowed by the Encroachment Permit, or are not constructed or maintained pursuant to District specifications as provided in the Encroachment Permit, the District shall notify the Permittee in writing of the deficiency. If the Permittee does not remedy the deficiency within the time specified in the written notice, the District shall have the following options: (1) immediately revoke the Encroachment Permit; (2) utilize the Permit to use a performance security to complete the work in a timely fashion, whether by notifying the surety on the performance bond to complete the work, or utilizing cash deposits or the revocable letter of credit to reimburse the District for its costs to complete any such work in a timely fashion and in accordance with the conditions of the Encroachment Permit.

## **1.11 Costs of completion and/or repair deducted from performance security.**

If the District completes, remedies, repairs or removes any structure, object or improvement constituting an encroachment on District Property as provided herein, all costs incurred by District in performing such work shall be deducted from the Permittee's performance security. If the amount of the performance security is insufficient to fully reimburse the District for all costs incurred in completing, repairing, or removing such work, the Permittee shall be liable for reimbursement to the District of all costs incurred by District in completing the construction, installation, alteration and/or repair of the improvements constituting the encroachment. If the amount of performance security posted by the Permittee is insufficient to cover such additional costs, District will require an additional cash deposit from Permittee in an amount sufficient to reimburse the District in full for all such costs

incurred. Failure of the Permittee to post such additional security when required by District will result in revocation of the Encroachment Permit.

#### **1.12 Performance security--Refund.**

Upon satisfactory completion of all the terms and conditions of the Encroachment Permit, any remaining portion of the performance security shall be returned to the Permittee. Unless required by prior agreement or law, the amount returned will not include interest.

#### **1.13 Appeal.**

- A. The actions of the General Manager in refusing to issue an encroachment permit, failing to act upon an application for an encroachment permit within thirty (30) days after it is filed and deemed complete by the General Manager, imposing unreasonable terms or conditions on the permit, or revoking an encroachment permit may be appealed to the Board of Directors by filing a notice of appeal with the clerk of the board within ten days following the action being appealed.
- B. The notice shall state one or more of the grounds for an appeal set forth in this section relied on by the appellant. The clerk shall within thirty (30) days of notice schedule the appeal to be heard by the Board of Directors and shall notify the appellant and the General Manager of the date and time of the hearing on the appeal. At the time fixed for the hearing, the Board of Directors may take such action on the permit as the Board finds just and may continue the hearing on the appeal from time to time by order entered into its minutes specifying the date and time of the continued hearing.

#### **1.14 Violation.**

- A. Any person violating any provision of this Ordinance shall be guilty of an infraction and shall be punishable by a fine not exceeding one hundred dollars (\$100.00) for the first violation, and a fine not exceeding two hundred dollars (\$250.00) for a second violation within one (1) year. The third and each successive violation of this Ordinance in the period of one (1) year shall constitute a misdemeanor and shall be punishable by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment. Each day any violation of this Ordinance continues shall constitute a separate offense.
- B. The violation of any provision of this Ordinance shall constitute a public nuisance subject to abatement in any manner authorized by law.