

**MSD Ordinance No. 23
Re: Easement Encroachments**

ORDINANCE NO. 23

**ORDINANCE OF THE BOARD OF DIRECTORS
OF THE MONTECITO SANITARY DISTRICT
ESTABLISHING POLICIES AND STANDARDS
FOR DISTRICT EASEMENTS AND REGULATING
EASEMENT ENCROACHMENTS**

WHEREAS, the Montecito Sanitary District (“District”) is a sanitary district duly organized and existing pursuant to the Sanitary District Act of 1923 codified in Health and Safety Code section 6400 et seq;

WHEREAS, under Health and Safety Code section 6514, the District may acquire “such real and personal property and rights of way, either within or without the limits of the district, as in the judgment of the board are necessary or proper to the exercise of its powers, and particularly for the purpose of permitting ingress to and egress from such real or personal property, ... ”;

WHEREAS, Health and Safety Code sections 6521 and 6491.3 authorize the Board of the District to make and enforce all necessary and proper regulations and ordinances for all other sanitary purposes not in conflict with the laws of the state of California;

WHEREAS, on July 13, 2023, the Board adopted Ordinance No. 22, establishing policies and standards for District easements and regulating easement encroachments; and

WHEREAS, the Board desires to rescind and replace Ordinance No. 22 with this Ordinance to establish a refined set of policies and standards.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MONTECITO
SANITARY DISTRICT DOES ORDAIN AS FOLLOWS:**

SECTION 1. Recitals. The Recitals above are true and correct and incorporated herein by this reference.

SECTION 2. Definitions. For purposes of this Ordinance, the following terms have the meaning specified below:

2.1 “District Facilities” means pipelines, manholes, pump stations, or any other structures, equipment and machinery, including appurtenances to them, which are used to collect, convey, treat, dispose of and reuse wastewater.

2.2. “Easement” means a property right, however created, by which the owner of the right is entitled to make specified uses of the real property of another person; “Easement” includes, “reserve,” “right of way,” “sewer reserve,” and “utility reserve.”

2.3. “Property Owner” means the fee owner or leaseholder of the servient tenement to the District’s Easement.

2.4. “Significant Interference” means, with respect to encroachments on District Easements, a use or condition that does or has the potential to inhibit access to District Facilities, particularly relating to vehicle access. A Significant Interference may include, but is not limited to, swimming pools, permanent decks, retaining walls, stone or concrete walls, sheds, recreational courts, trees, gates, fences, and utility infrastructure.

The determination regarding whether an activity or condition constitutes a Significant Interference shall be made by the General Manager within a reasonable amount of time as required by 309565.7

MSD Ordinance No. 23
Re: Easement Encroachments

California Government Code section 65913.3.1.

2.5 “Unwarranted Liability” means, with respect to encroachments on District Easements, a use or condition that does or has the potential to: (1) result in significant expense related to replacement or restoration as a consequence of the District accessing its Easement or (2) damage the District’s infrastructure. An Unwarranted Liability may include, but is not limited to, heavy brush and vegetation, lawns, flowerbeds, and hardscapes.

The determination regarding whether an activity or condition constitutes an Unwarranted Liability shall be made by the General Manager within a reasonable amount of time as required by California Government Code section 65913.3.1.

SECTION 3. Unauthorized Encroachments. It is unlawful for any person to:

3.1. Cause, permit, or maintain an unauthorized encroachment on a District Easement that results in a Significant Interference or Unwarranted Liability to the District’s Easement rights or District’s Facilities, including limiting vehicle access.

3.2. Cause, permit, or maintain any activity or condition off or outside a District Easement that causes, whether directly or indirectly, a Significant Interference or Unwarranted Liability to the District’s Easement rights.

SECTION 4. Authorized Encroachments.

4.1 A property owner may make use of the land over which the District has an Easement if the use or condition does not violate Section 3 of this Ordinance.

4.2 Notwithstanding Section 4.1, the District may enter into a license agreement with a property owner whereby a Significant Interference or Unwarranted Liability may be maintained for a limited duration or indefinitely, subject to its removal and repair or replacement, at the property owner’s expense upon termination of the license agreement.

SECTION 5. Removal & Restoration of Improvements Disturbed by District Activities. Whenever the District’s reasonable use of the Easement to construct, reconstruct, renew, alter, operate, maintain, inspect, repair, or replace District Facilities results in the need for the property owner’s improvements to the real property to be removed or disturbed, the following provisions apply:

5.1 The District shall, at the expense of the District, replace or restore the improvements in kind which are not a Significant Interference or Unwarranted Liability under this Ordinance, upon the completion of the District’s activities.

5.2 If the encroachment is authorized pursuant to a license agreement and the license agreement does not specify otherwise, the property owner shall, at no expense to the District, be responsible for restoring the encroaching improvements.

5.3 A Significant Interference or Unwarranted Liability shall be removed by the property owner at his or her expense. Removal shall be performed promptly after notice from the District. If the encroachment has not been removed within a reasonable time after notice, or if the urgency of the District’s Easement activities requires, the District may remove the encroachment itself, and the removal costs will be charged to the property owner.

SECTION 6. District Remedies. The remedies granted to the District in this Ordinance are in addition to any other rights and remedies that are available under prior regulations or otherwise afforded by law, and the District is entitled to exercise any and all such rights and to charge property owners for

MSD Ordinance No. 23
Re: Easement Encroachments

the costs of such remedies either serially or cumulatively, as determined by the District.

SECTION 7. CEQA. This action is not a project for purposes of 15 CCR 15378(b)(5) in that It is an administrative activity that will not result in direct or indirect physical changes in the environment.

SECTION 8. Publication & Effective Date. Under Health and Safety Code section 6490, immediately following adoption, the Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the District, and the ordinance will take effect upon expiration of the week of publication.

SECTION 9. Severability. If any section of this Ordinance is held to be invalid or unconstitutional, the remaining sections shall remain valid. The Board hereby declares that it would have adopted this ordinance regardless of whether any particular section is held invalid or unconstitutional.

SECTION 10. Noticing. The District will contact the County Counsel’s office of the County of Santa Barbara and provide a copy of the Ordinance at the earliest opportunity.

PASSED AND ADOPTED by the Board of Directors of the Montecito Sanitary District on this 20th day of March, 2024, by the following vote:

AYES: Directors Hogan, Johnson, Martin, Ohlmann, and Barrett
NAYS: None
ABSTAIN: None
ABSENT: None



DocuSigned by:
Ellwood T. Barrett II
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Ellwood T. Barrett II
President of the Board of Directors of the
MONTECITO SANITARY DISTRICT

ATTEST: DocuSigned by:
Stephen Williams
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Stephen Williams
Clerk of the Board of Directors of the
MONTECITO SANITARY DISTRICT