

ORDINANCE NO. 1793-0602

ORDINANCE (1) AMENDING POLICIES, STANDARDS AND REQUIREMENTS
FOR DISTRICT EASEMENTS AND REGULATING EASEMENT
ENCROACHMENTS, AND (2) RESCINDING ORDINANCE NO. 1726-1299

The Board of Directors of Stege Sanitary District finds and determines:

A. On December 16, 1999, the Board adopted Ordinance No. 1726-1299, an “Ordinance Establishing Policies, Standards and Requirements for District Easements and Regulating Easement Encroachments.”

B. Amendments to Ordinance No. 1726-1299 are necessary and desirable and will be best accomplished by rescinding Ordinance No. 1726-1299 in its entirety and adopting this Ordinance in its place.

In consideration of the foregoing findings and determinations,

IT IS ORDAINED by the Board of Directors of Stege Sanitary District as follows:

1. Definitions. For the purposes of this Ordinance, the following terms have the meanings specified below:

1.1 “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” include, “reserve,” “sewer reserve,” or “utility reserve”.

1.2 “Wastewater facilities” means pipelines, 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.

1.3 “Encroachment” means an activity or condition which results in interference with the rights of the owner of an easement. As used in this Ordinance with respect to District easements, there are three classes of encroachments:

Class One. Encroachments which interfere only slightly with District easements. Examples may include loose paving stones and similar landscaping features, flowerbeds, small shrubs, lawn and ground covers which do not impede normal use and operation of District wastewater facilities and may readily be removed and restored at a modest cost if access to the facilities is required.

Class Two. Encroachments which will cause significant interference with District easements but which, due to being readily removable or by virtue of District mandated safeguards and/or mitigation measures, the interference can be ameliorated to an acceptable level. Examples may include fences, gates, driveways, paving, portable or readily removable

structures, larger vegetation whose roots do not have a propensity to invade wastewater facilities, and cuts and fills.

Class Three. Encroachments which will cause significant interference with District easements. Examples may include permanent structures such as buildings, swimming pools, permanent decks, retaining walls and reinforced concrete or masonry; temporary structures which are not readily removable from the easement; also trees, heavy brush, and vegetation that prevents District access to its facilities in the easement; also any activities and conditions that are unlawful or prohibited by this Ordinance or by other applicable laws.

1.4 “Significant interference” means, with respect to encroachments on District easements, an activity or condition which has the potential to impede access to or damage District wastewater facilities or which will result in excess of one person-hour of effort by the District to use the easement for its intended purposes.

2. District Policies Concerning Easements. The following are District policies concerning easements:

2.1 Wherever feasible, District-owned wastewater facilities shall be located on lands owned by the District, public lands to which the District has largely unrestricted access or in public streets, roads, highways or other public rights of way in which, by law, the District is entitled to construct, install, operate and maintain its facilities.

2.2 District-owned wastewater facilities shall not be located and permanently installed on or in private property, unless the District has acquired an easement or easements for the facilities conforming to this Ordinance. Temporary installations may be made pursuant to a license or other similar authorization approved by the District.

2.3 The location of District wastewater facilities, as described in Section 2.1, is strongly preferred over the type of location described in Section 2.2.

2.4 In furtherance of the policy stated in Section 2.3, District wastewater facilities should not be installed in easements over private property unless:

2.4.1 Installation in a Section 2.1 location is not possible, would be impracticable or would be unduly burdensome; and

2.4.2 The District’s easement rights shall be sufficient to enable the District to operate and maintain its facilities without excessive cost or other undue difficulty.

2.5 Subject to its right to abandon or relinquish ownership of any wastewater facilities which are no longer in use and which are not required for future District

needs, the District claims that as of the effective date of this Ordinance, it has acquired and owns easement rights for all District wastewater facilities which are located in or on private property, whether or not the District's easement rights are evidenced by a recorded written instrument or other writing providing notice of the District's claimed easement rights.

3. Creation of District Easements

3.1 District easements may be created in any manner allowed by law so long as the easement has been approved and accepted by the District.

3.2 Notwithstanding Section 3.1 above, easements to be conveyed to the District should ordinarily be created by express grant or reservation in a written instrument eligible for recordation in official records of the County of Contra Costa. The form and content of the instrument shall be acceptable to the District but shall not be effective until the instrument has been duly delivered to, approved and accepted by the District.

4. Minimum Standards for Easements

4.1 Unless expressly waived by the District for good cause, an easement conveyed to the District shall be subject to the following minimum standards:

4.1.1 For the purpose of exercising its principal easement rights, the District shall also be afforded the right of ingress and egress to, from, along, on, in, above and below the surface of the land encompassed by the easement.

4.1.2 The easement shall be subject to the provisions of this Ordinance and to other rules and regulations promulgated by the District.

4.1.3. In the case of easements for pipelines, the easement shall have a horizontal width of not less than ten (10) feet

4.2 Easements shall be for the exclusive benefits of the District or they may be non-exclusive. If the easement is nonexclusive, other users of the territory encompassed by the easement shall be prohibited from interfering with the District's easement rights.

5. Unlawful Acts. It is unlawful for any person to:

5.1 Cause or permit an unauthorized encroachment on a District easement;

5.2 After notice, fail to abate or otherwise remove or discontinue any action or condition which results in an unauthorized encroachment;

5.3 Abandon any items of property, including motor vehicles, on or within a District easement;

5.4 Deposit any debris, garbage, trash, toxic substance, liquid or solid waste or other form of refuse on or within a District easement;

5.5 Cause, permit or maintain any activity or condition off or outside the territory of a District easement which causes directly or indirectly a significant interference with the District's easement rights; or

5.6 Cause or permit any activity or condition on or within a District easement which constitutes a public or private nuisance.

6. Authorized and Unauthorized Encroachments

6.1 A property owner may make use of the land over which the District has an easement if those uses do not result in significant interference with the easement.

6.2 Except as provided in Section 7, Class Two and Class Three Encroachments are not authorized and shall not be maintained or permitted on District easements.

6.3 The owner of the property over which the District has an easement and any other person who has caused or permitted an unauthorized encroachment to exist is obligated to promptly remove and eliminate the encroachment.

7. Encroachment Permits. The owner of a property over which the District has an easement who wishes to maintain a Class Two Encroachment or to obtain Grandfather Relief for a Class Three Encroachment, shall apply for and obtain a District Encroachment Permit. No permit is required for a Class One Encroachment.

7.1 The District shall establish and the applicant shall comply with such procedures as are required to process and act on the application, including payment of applicable fees, completion of approved application forms, and submission of specified information needed to evaluate the application.

7.2 An Encroachment Permit shall be issued if:

7.2.1 The applicant has fully complied with all District requirements and procedures pertaining to issuance of the Permit;

7.2.2 The applicant has accepted and agreed to all conditions upon which the Permit is proposed to be issued (see Section 8);

7.2.3 With respect to Class Two Encroachments, the District finds that as conditioned, the Permit shall ensure that the Class Two Encroachments authorized by the permit will not result in significant interference with the District's easement; and

7.2.4 With respect to Grandfathered Class Three Encroachments, the District finds that as conditioned, the Permit shall to the greatest extent

reasonably possible preserve the District's easement rights while at the same time, in the interests of fairness and substantial justice, make appropriate allowances for justifiable concerns of the property owner. (See Sections 8 and 10.) Under no circumstances shall a Class Three Encroachment be eligible for Grandfathering if:

7.2.4.1 Grandfathering could result in a violation of any statute, regulation, order or other provision of law promulgated or enacted by a federal, state or local government entity having jurisdiction over the matter in question;

7.2.4.2 Grandfathering would be materially detrimental to the public health, safety and welfare; or

7.2.4.3 Grandfathering would result in undue hardship to other persons.

8. Encroachment Permit Conditions. The District shall not issue an Encroachment Permit unless conditioned as follows:

8.1 The applicant shall be obliged to fully perform and satisfy all conditions of the Permit;

8.2 When required by the District, the applicant shall cooperate with the District and shall execute a written instrument in recordable form which, when recorded by the District, will place on public record provisions of the Permit which are intended to be known and binding upon any person who succeeds to ownership of an interest in the real property which is subject to the District's easement;

8.3 The permit shall be subject to all of the provisions of this Ordinance;

8.4 With respect to Class Two Encroachments, the Permit shall be conditioned so as to mitigate the effects of the encroachment and safeguard the District's easement rights such that the effect of the mitigation measures and safeguards shall prevent the encroachment from causing significant interference with the District's easement; and

8.5 With respect to Grandfathered Class Three Encroachments, the Permit shall include conditions, which, to the extent reasonably possible under the circumstances, will:

8.5.1 Eliminate the encroachment in due course; and

8.5.2 Until eliminated, alleviate the impacts of the encroachment on the District's easement by requiring mitigation measures and/or safeguards and/or by shifting to the property owner and/or other responsible parties

any financial detriment which may be suffered by the District due to the existence of the activity or conditions.

9. Other Regulations. By resolution of the District's Board of Directors adopted from time to time, as the Board deems necessary and appropriate, the District may promulgate and amend rules, regulations and procedures to implement the provisions of this Ordinance, including the following:

9.1 Establish rules, regulations, and procedures concerning applications for and issuance of Encroachment Permits;

9.2 Set fees and charges for District services related to easements;

9.3 List and categorize activities and conditions which constitute encroachments; and

9.4 Establish standard Encroachment Permit conditions applicable to specific activities and conditions including mitigation measures, safeguards and similar provisions.

10. Grandfathering. A ClassThree Encroachment which was in existence prior to the effective date of this Ordinance may be maintained and shall not be subject to immediate mandatory removal if the encroachment is Grandfathered pursuant to this Section. An encroachment shall be Grandfathered if the applicant has applied for and obtained an Encroachment Permit pursuant to Section 7.2.4 of this Ordinance.

11. Removal and Restoration of Improvements Which are Disturbed by District Activities. Whenever District activities in District easements result in the need for improvements or other activities or conditions of the real property subject to the easement to be removed or otherwise disturbed, the following provisions shall apply:

11.1 Conditions and Activities Not Constituting Unauthorized Encroachments. The District may, at the expense of the District, temporarily remove or discontinue the activity or condition, and upon completion of the District's activities, the District shall, at the District's expense, restore the activity or condition in kind.

11.2 Encroachments Authorized by Permit. If the encroachment is authorized pursuant to an Encroachment Permit and the Encroachment Permit does not provide otherwise, the District shall, at the District's expense, restore the activity or condition in kind.

11.3 Unauthorized Encroachments. Unauthorized encroachments shall be permanently removed by the property owner and/or other responsible person and shall not be restored. Removal shall be performed promptly by and at the expense of the property owner/responsible parties. If the encroachment has not been removed within a reasonable time after notice has been given by the District, or if the urgency of the District's easement activities requires that the activities be

commenced without prior notice, the District may remove the encroachment itself, but the removal costs shall be charged back to the property owner/responsible party.

12. District Remedies. Remedies granted to the District in this Ordinance are in addition to any other rights and remedies which are available under this Ordinance or which are otherwise afforded by law, and the District is entitled to exercise any and all such rights and remedies, either serially or cumulatively, as determined by the District.

13. Request for Relief by Affected Persons. Any person who contends that his/her/its rights have been adversely affected by any action of or failure to act by the District in connection with the provisions of this Ordinance, may seek relief from the District under such rules and procedures as the District shall establish.

14. Superseding Effect. This Ordinance supersedes Ordinance No. 1726-1299 and all other previous and currently existing regulations which are in conflict with its provisions, and all such regulations are rescinded and repealed as of the date this Ordinance becomes effective.

15. CEQA. In accordance with the California Environmental Quality Act (“CEQA”), Public Resources Code sec. 21000 et seq. and the regulations promulgated pursuant to CEQA (“the State Guidelines”), the Board of Directors finds that this Ordinance is not a “project” within the meaning of the Act or the State Guidelines.

16. Effective Date. Upon adoption, this Ordinance shall be entered in the minutes of the Board and shall be published in the El Cerrito Journal promptly following its passage and adoption, and this Ordinance shall take effect and be in force and effect immediately upon the expiration of the week of publication.

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STATE OF CALIFORNIA)
 COUNTY OF CONTRA COSTA)

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly adopted by the Board of Directors of the Stege Sanitary District, at a regular meeting thereof, held on the 20th day of June 2002 by the following vote:

AYES:	BOARD MEMBERS:	James, Merrill, Miller, O’Keefe, Bruce
NOES:	BOARD MEMBERS:	None
ABSENT:	BOARD MEMBERS:	None
ABSTAIN:	BOARD MEMBERS:	None

DOUGLAS BRUCE, President
 Stege Sanitary District
 Contra Costa County, California

ATTEST:

DOUGLAS HUMPHREY, Secretary
 Stege Sanitary District