

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT PROHIBITING UNAUTHORIZED ENCROACHMENTS ON DISTRICT LAND AND ADOPTING PROCEDURES, PENALTIES AND OTHER REMEDIES FOR SUCH ENCROACHMENTS.

Ordinance No. 2017-01

WHEREAS, Kensington community voters created and fund the Kensington Police Protection and Community Services District (“District”) to provide police, solid waste, and recreational services; and

WHEREAS, the District owns and operates park grounds and facilities for the benefit of its residents; and

WHEREAS, from time to time, private individuals have installed landscaping and other improvements on District-owned real property, without District permission, which has the effect of privatizing the affected land and depriving the public of full enjoyment thereof; and

WHEREAS, when encroaching property owners fail to voluntarily remove said encroachments, the District must initiate and prosecute action to reclaim the land for its intended public purpose; and

WHEREAS, to abate unauthorized encroachments, the District may be required to expend public funds for, without limitation, surveyors, service of process, court costs, attorneys’ fees and ultimately, removal of the improvements;

WHEREAS, the District Board of Directors finds that all costs of removing unauthorized encroachments should be borne by the person or persons that installed them and not by public funds.

NOW, THEREFORE, THE DISTRICT BOARD OF DIRECTORS OF THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT DOES ORDAIN AS FOLLOWS:

SECTION 1: The District Board of Directors hereby ordains and adopts the following Administrative Enforcement Ordinance for Unauthorized Encroachments:

ADMINISTRATIVE REMEDIES

§ 1. Definitions. As used in this ordinance, the terms listed in this section shall have the following meaning:

Administrative Order: The Order issued by the Board if the Encroachment is not corrected by the Compliance Date, pursuant to §§ 8 and 9 of this Ordinance.

Compliance Date: A Notice and Compliance Order's deadline for taking the corrective actions specified therein to remove an Encroachment and restore District-owned land, as set forth in a Notice of Violation and Compliance Order. The District Board may modify the Compliance Date upon appeal pursuant to § 6.

Corrective Actions: The actions necessary to remove an Encroachment and restore District-owned land to its condition preceding the Encroachment.

District: the Kensington Police Protection and Community Services District.

District Board: The Board of Directors of the Kensington Police Protection and Community Services District or its designee.

District-owned land: real property in which the District holds an interest, including, without limitation, fee title ownership, easement or leasehold.

Encroacher: a person or persons who have created, maintained, installed or is otherwise responsible for an Encroachment. Where the Encroachment has been installed or maintained in association with privately owned real property by a person other than the owner of said property, both said owner and the person who installed or maintained the Encroachment shall be considered Encroachers.

Encroachment: Any object, structure, vegetation or other improvement of any kind that encroaches, intrudes or otherwise is located on District-owned land and that has been installed, maintained or otherwise caused to exist by a party other than the District. Encroachments include, without limitation, all activities defined as Work under this ordinance.

Encroachment permit means written District approval of Work within, upon, or beneath District-owned land.

Manager: The General Manager of the District or his/her designee.

Notice of Violation and Compliance Order: The document that the District shall serve upon the Encroacher describing the violation of this ordinance, outlining the actions necessary to correct the violation and stating the District's intention to record said Notice if the violation is not corrected by a specified date, as more fully described in § 5.

Work: The erection of any structure; placement of any improvement; filling; excavation; installation or removal of utility lines or pipes; installation or construction of sidewalks or driveways; installation of roadway approaches; removal or planting of trees or shrubs. "Work" shall also include installation or construction of sidewalks or driveways; removal or planting of trees or shrubs, or any activity that interferes with or obstructs the free flow of traffic, pedestrians or normal activities on public property. "Work" shall also include, without limitation, the business or trade of selling, vending, hawking or peddling any merchandises, article or item whatever.

2. Applicability.

(a) This ordinance is adopted pursuant to § 53069.4 of the California Government Code.

(b) This ordinance provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, that the District may pursue to address any violation of state and local law.

(c) The administrative abatement process set forth in this ordinance applies to continuing violations of this ordinance.

(d) The Manager shall have sole discretion whether to use the administrative remedies process set forth in this ordinance.

§ 3. Encroachments Prohibited.

(a) No person may create, install, maintain or allow an Encroachment without prior written District approval.

(i) Any person violating any of provision this ordinance shall be guilty of an infraction except as otherwise set forth herein.

(ii) Each person who violates this ordinance shall be charged with a separate offense for each and every day during any portion of which any violation of

any provision of this ordinance is committed, continued or permitted by such.

(iii) The Manager shall have sole discretion to charge repeat offenses as misdemeanors.

(b) The Manager shall have discretion to issue temporary Encroachment permits for Work of up to ten days duration. No such permit shall create a property interest on the part of the permittee.

(c) The District Board must approve any Encroachment permit for Work or other Encroachment expected to continue for more than ten days. No such permit shall create a property interest on the part of the permittee unless the Board expressly grants such an interest.

(d) Any Encroachment permit issued pursuant to this ordinance shall be subject to such terms and conditions that the District, in its sole discretion, deems necessary to ensure the timely removal of any Encroachments and restoration of District land to its condition preceding the Work or other Encroachment.

§ 4. Method of Service. Whenever this ordinance requires service of any document, the District shall cause said service to occur as set forth in this section. The District shall mail the document to the Encroacher if their address is reasonably available and shall conspicuously post a copy of the order at the property that is the site of the Encroachment. In addition, where the Encroachment is associated with real property owned or occupied by the Encroacher, the District shall also serve the document on the occupant of said real property and the owner of said real property at the owner's address as it appears on the last equalized county assessment roll available on the date the notice is prepared. The failure of any person to receive any notice required under this ordinance shall not affect the validity of any proceedings taken under this subchapter.

§ 5. Notice of Violation, Compliance Order and Intention to Record.

(a) Whenever the Manager determines that a violation this Ordinance is occurring or exists, the Manager may issue a written notice of the violation ("Notice of Violation and Compliance Order"), served as set forth in § 4 to any person responsible for the violation.

(b) A Notice of Violation and Compliance Order issued pursuant to this ordinance shall contain the following information:

- (i) The location of the violation;
 - (ii) A citation to this ordinance and a description of the violation;
 - (iii) The Corrective Actions required to comply with this Ordinance;
 - (iv) The Compliance Date, which shall be the last day to complete the Corrective Actions.
 - (v) A statement that if the Corrective Actions are not complete by the Compliance Date, (A) administrative penalties will begin to accrue on a daily basis, and (B) the District will record Notice of Violation and Compliance Order against any privately owned real property associated with the Encroachment and commence abatement proceedings.
 - (vi) Either a copy of this ordinance or an explanation of the consequences of noncompliance with this ordinance, including the amount of potential penalties, and a description of the hearing procedure and appeal process.
 - (vii) A statement that the failure to file an appeal within 10 days of the date of the issue date of the Notice of Violation and Compliance Order will be considered a waiver of any objections to the facts stated in said document and a failure to exhaust administrative remedies regarding said facts.
- (c) The Compliance Date shall give the Encroacher a reasonable period in which to complete the Corrective Actions. However, should the violation constitute an imminent threat to life or property, the Manager may order immediate compliance.
- (d) The Manager shall have the discretion to extend the Compliance Date by up to 15 calendar days upon a finding that prior to the Compliance Date, the Encroacher has obtained any necessary permits and begun and diligently performed the Corrective Actions.

§ 6. Appeal; Board Hearing.

- (a) Any person served with a Notice of Violation and Compliance Order may file an appeal within ten (10) calendar days from the date of service. If no appeal is filed within same period, the Notice of Violation and Compliance Order will constitute a final decision of the District as to the matters stated therein under Government Code Section 53069.4(b)(i).

(b) The appellant shall file their appeal in writing with the Manager, setting forth the basis of the appeal in sufficient detail to enable the Manager to investigate the facts therein.

(c) The District shall set a date, time and place for the hearing before the District Board. The deadlines set forth in the Notice of Violation and Compliance Order shall be tolled while the appeal remains pending.

(d) The Board's hearing shall be informal and formal rules regarding evidence and discovery shall not apply. The Board shall consider any written or oral evidence regarding the alleged violation and actions required to cure the violation.

(e) Within 15 days following the conclusion of the hearing, the Board shall issue its written decision, making findings of fact on each alleged violation, which findings shall be supported by a preponderance of evidence in the record. The District will serve the Board's decision on the Encroacher as set forth in § 4.

(i) If the Board determines that the Encroachments described in the Notice of Violation and Compliance Order do not exist, it shall revoke said document and the District will take no further thereon.

(ii) If the Board determines by a preponderance of the evidence that the Notice of Violation and Compliance Order correctly describes violations of this ordinance and the actions required to correct them, it shall affirm the Notice of Violation and Compliance Order. The Board shall have the discretion to modify the Compliance Date to allow a reasonable period of time to complete the Corrective Actions.

(iii) If the Board determines that the Notice of Violation and Compliance Order inaccurately describes violations of this ordinance and/or the actions required to correct them, it shall issue a corrected Notice of Violation and Compliance Order.

(iv) The District Board's decision shall constitute a final decision of the District as to the matters stated therein under Government Code Section 53069.4(b)(i).

(f) The Board may establish an appeal fee by resolution, which fee shall be paid at the time the appellant files their appeal.

§ 7. Actions Subsequent to the Notice of Violation and Compliance.

(a) If the Manager determines that the Corrective Actions have been completed on or before the Compliance Date, the District will take no further action with respect to the subject Encroachment.

(b) If the Corrective Actions have not been completed on or before the Compliance Date, the administrative penalties shall begin to accrue, the Manager shall record the Notice of Violation and Compliance Order and shall set an Abatement Hearing before the District Board.

(c) The District shall cause a written notice of the Abatement Hearing to be served on the Encroacher as set forth in § 4.

(d) The notice of the Abatement Hearing on a Notice of Violation and Compliance Order shall contain the date, time and place at which the District Board shall conduct the hearing.

(e) Each hearing shall be set on a date not less than 10 days nor more than 60 days from the date of the notice of hearing unless the Manager determines that the matter is urgent or that good cause exists for an extension of time.

(f) The failure of any person subject to a Notice of Violation and Compliance Order to appear at the hearing shall constitute a failure to exhaust administrative remedies, and a waiver of the right to contest the accrual of administrative penalties, recordation of the Notice of Violation and Compliance Order and abatement of the Encroachment.

§ 8. Abatement Hearing; Findings and Order.

(a) At the place and time set forth in the notice of Abatement Hearing, the District Board shall conduct an administrative hearing following the procedures described in § 6(d) and (e) except that the only issues under consideration shall be the following:

(i) The failure of the violator or owner to complete the Corrective Actions on or before the Compliance Date; and

(ii) Whether the Board should order abatement of the Encroachment or pursue other remedies.

(b) Within 15 days following the conclusion of the hearing, the Board shall make findings and issue its determination regarding:

- (i) The Board shall issue written findings, which shall be supported by a preponderance of the evidence in the record.
- (ii) If the Board finds, by majority vote, that the Corrective Actions were not completed by the Compliance Date, the Board shall issue an administrative order as set forth in § 9 of this ordinance.
- (iii) If the Board finds that the Corrective Actions were completed by the Compliance Date, the Board shall issue a finding of those facts and direct that the recorded Order be cancelled.

§ 9. Administrative Order. If the District Board determines that the Corrective Actions were not completed on or before the Compliance Date, the Board shall issue an Administrative Order described in § 8 imposing any or all of the following:

- (a) Administrative penalties as provided in § 10, retroactive to the Compliance Date;
- (b) Administrative and other costs as provided in § 11, retroactive to the Compliance Date;
- (c) An abatement order, directing District staff to abate the Encroachment if the Encroachment is not removed as ordered by the Administrative Order.
- (d) If the Board finds that the Encroacher has worked diligently and in good faith to complete the Corrective Actions on or before the Compliance Date, the Board may grant a one-time extension before imposing Administrative Penalties and commencing abatement. This extension shall be contingent upon the Encroacher depositing with the District the estimated Administrative Costs described in § 11, for which the Encroacher shall remain liable.
- (e) The Administrative Order will constitute a final decision of the District as to the matters covered therein under Government Code Section 53069.4(b)(i).

§ 10. Civil Administrative Penalties.

- (a) Where a violation would be considered an infraction under §3(a)(i), the civil penalties assessed for each administrative citation issued for the same violation shall not exceed the following amounts:
 - (i) First violation, One Hundred Dollars (\$100.00) per day per violation;

(ii) Second violation within a one-year period, Two Hundred Dollars (\$200.00) per day per violation;

(iii) Third or subsequent violation within a one-year period, Five Hundred Dollars (\$500.00) per day per violation.

(b) Where a violation would be considered a misdemeanor under §3(a)(i), the civil penalties assessed for each violation shall not exceed One Thousand Dollars (\$1,000.00) per day per violation.

(c) Each day after the Compliance Date that the Corrective Actions remain incomplete shall constitute a separate violation.

(d) In determining the amount of the administrative penalty, the Board may take any or all of the following factors into consideration:

(i) The duration of the violation;

(ii) The frequency, recurrence and number of violations, related or unrelated, by the same Encroacher;

(iii) The seriousness of the violation;

(iv) The good faith efforts of the violator to come into compliance;

(v) The economic impact of the penalty on the violator;

(vi) The impact of the violation on the community;

(vii) Such other factors as justice may require.

(e) Administrative penalties imposed by the Board shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the Manager or the Board.

(f) Administrative penalties assessed by the Board shall be due by the date specified in the administrative order.

(g) Administrative penalties assessed by the Board are a debt owed to the District and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.

(h) If the violation is not corrected as specified in the Board's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in division (c) above.

(i) If the violator gives written notice to the Manager that the violation has been corrected and if the Manager finds that compliance has been achieved, the Manager shall deem the date the written notice was postmarked or personally delivered to the Manager or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Manager, the violation will be deemed corrected on the date of the final inspection.

§ 11. Administrative Costs.

(a) The District Board shall assess administrative costs against the violator when it finds that the Corrective Actions have not been completed by the Compliance Date.

(b) The administrative costs may include any and all costs incurred by the District in connection with the violation of this ordinance, including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, attorney fees and costs for all permits, work and inspections necessary to enforce the Notice of Violation and Compliance Order.

§ 12. Failure to Comply with Administrative Order. Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the District Board may be enforced as:

(a) A personal obligation of the violator, enforceable in Small Claims Court; and/or

(b) Where the Encroachment or Work is associated with real property owned or occupied by the Encroacher, a lien upon the real property. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

§ 13. Right of Judicial Review; Attorney's Fees.

(a) Any person aggrieved by a final District action under this ordinance may obtain judicial review by filing a motion for review with the Superior Court in Contra Costa County in accordance with the timelines requirements and provisions set forth in Cal. Gov. Code § 53069.4.

(b) The prevailing party in any judicial action and/or administrative proceeding to abate a nuisance and/or to enforce any provision of this ordinance shall recover the incurred attorney's fees as follows:

(i) The recovery of attorney's fees shall be limited to those individual judicial actions or administrative proceedings in which the District elects, at the initiation of that individual judicial action or administrative proceeding, to seek recovery of its own attorney's fees; and

(ii) In no judicial action or administrative proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the District in the judicial action or administrative proceeding.

§ 14. Recovery of Administrative Civil Penalties.

The District may collect the assessed administrative penalties, administrative costs and attorney's fees by use of all available legal means, including recordation of a lien pursuant to § 17.

§ 15. Report of Compliance After Administrative Order.

If, after the District Board has issued an Administrative Order, the Manager determines that the Corrective Actions are complete, the Manager shall so advise the Board by written report.

§ 16. Compliance Dispute.

(a) If the Manager does not file a report pursuant to § 15, an Encroacher who believes that compliance has been achieved may request a compliance hearing before the Appeals Hearing Board by filing a request for a hearing with the Board.

(b) The hearing shall be noticed and conducted in the same manner as a hearing on a Notice of Violation and Compliance Order provided in §§ 6 and 7 of this ordinance.

(c) The Board shall determine the dispute as follows:

(i) If the Corrective Actions are complete, the completion date, and to what relief, if any, the Encroacher may be entitled.

(ii) If compliance has not been achieved, what further steps are required to achieve compliance. In addition, for good cause shown, the Board may amend or modify its original Administrative Order.

§ 17. Lien Procedure.

(a) Whenever the amount of any administrative penalties and/or costs imposed by the Administrative Order in connection with privately owned real property has not been satisfied in full within 90 days and/or has not been successfully challenged by a timely motion for judicial review, these obligations may constitute a lien against said real property.

(b) The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of the Cal. Civ. Proc. Code §§ 697.340 and may be extended as provided in Cal. Civ. Proc. Code §§ 683.110 to 683.220, inclusive.

(c) Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.

(d) A copy of the recorded lien shall be served upon the owner of the subject property pursuant to § 4 of this ordinance.

§ 18. Public Hearing and Protests.

(a) Any person whose real property is subject to a lien pursuant to § 16 may file a written protest with the Manager within ten (10) days of receiving notice thereof.

(b) Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection. Notwithstanding the foregoing, the District will only consider protests on grounds that the owner could not have raised on appeal from the Notice and Compliance Order pursuant to § 6 of this ordinance nor at the Abatement Hearing conducted pursuant § 8 of this Ordinance.

(c) The District Board shall set the matter for hearing no sooner than 15 days and no later than 60 days after the receipt of the protest.

(d) The District Board's decision will constitute a final decision of the District as to the matters covered therein under Cal. Gov. Code Section 53069.4(b)(i)

§ 19. Recording of Lien.

Thirty days following the adoption of a resolution by the District Board imposing a lien, the Manager shall file the same as a judgment lien in the office of the County

Recorder of Contra Costa County, California. The lien may carry such additional administrative charges and costs, including attorneys' fees, as set forth by resolution of the District Board.

§ 20. Satisfaction of Lien.

Once the District receives payment in full for outstanding penalties and costs, the Manager shall either record a notice of satisfaction or provide the property owner or financial institution, with a notice of satisfaction so they may record the notice with the office of the County Recorder. Such notice of satisfaction shall cancel the District's lien.

§ 21. Foreclosure of Real Property Lien.

The District may foreclose the lien and sell the real property by the filing of a complaint for foreclosure in a court of competent jurisdiction and obtaining a judgment to foreclose. There shall be no right to trial by jury. The prevailing party shall be entitled to its attorneys' fees and costs.

§ 22. Redemption of Lien.

The property owner may redeem the lien by the payment in full of all amounts secured by the lien within six months after the lien is recorded and notice is given to the property owner.

§ 23. Penalties as Personal Obligation.

If the District Board determine that the administrative penalties and costs set forth in the Board's order should become a personal obligation of the Encroacher, it may direct that a petition be filed with a court of competent jurisdiction to enter said order as a judgment of that court. The prevailing party shall be entitled to its attorneys' fees and costs.

§ 24. Interest.

Interest shall accrue on all amounts declared due by the District Board, and unpaid, from the date of the administrative order to the date paid pursuant to the laws applicable to civil money judgments.

§ 25. Rules and Regulations.

The District Board may by resolution adopt such rules and regulations for the administration and interpretation of this chapter as it may consider proper.

SECTION 2. SEVERABILITY.

If a court of competent jurisdiction issues a decision holding that any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance, or any part thereof, is invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining sections or portions of this chapter or part thereof. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that any one or more sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. EFFECTIVE DATE.

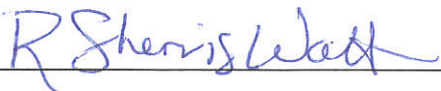
This Ordinance shall take effect and be in force thirty (30) days after the date of passage. Pursuant to the provisions of Government Code Sections 61060 and 25124, District staff shall post a copy of the ordinance within in fifteen (15) of passage, with the names of the directors voting for and against the ordinance. The ordinance shall be posted for at least one week in a prominent place at the Board chambers and at the bulletin boards at the Arlington Avenue Kiosk, Colusa Market, and Kensington Library.

This ordinance was introduced at a regular meeting of the Board of Directors of the Kensington Police Protection and Community Services District on November 16, 2017, and was adopted at a regular meeting of the said Board on December 14, 2017, by the following vote:

AYES: DIRECTORS: President Rachelle Sherris-Watt, Vice President Eileen Nottoli, Director Len Walsh, Director Sylvia Hacaj and Director Christopher Deppe

NOES: DIRECTORS: None

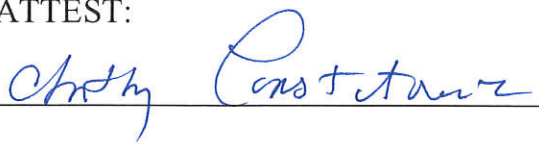
ABSENT: DIRECTORS: None



RACHELLE SHERRIS-WATT

President, District Board of Directors

ATTEST:



ANTHONY CONSTANTOUROUS

General Manager & Secretary to the Board