

Bolinas Community Public Utility District

Ordinance No. 30

Establishes Rules And Procedures For Governing The Use Of The Gridded Public Right Of Way Network On The Mesa

I. Background:

A. WHEREAS there exists in the part of Bolinas known as The Mesa a gridded public right of way network; and

B. WHEREAS said right of way network has been dedicated to public use; but no public agency has accepted the same; and

C. WHEREAS the Bolinas Community Public Utility District is the owner in fee of such network; and

D. WHEREAS customary use of such rights of way has historically developed in an atmosphere of *laissez-faire* with some roads maintained by private persons, other roads abandoned through disuse, and others encroached upon by private persons through buildings, landscaping and the like; and

E. WHEREAS differences arise from time to time as to which roads should be maintained, repaired and improved, and by whom, and under what circumstances; and

F. WHEREAS: It has become apparent that a need exists for a coherent set of rules and procedures governing the use of the gridded public right of way network on the Mesa.

Now therefore the Bolinas Community Public Utility District enacts as follows:

II. Definitions:

A. **Right of way:** That land lying within the boundaries of the road network as shown on that certain map entitled "Map of Bolinas Beach, Marin County California", filed for record May 4, 1927, in Volume 5 of Maps, at page 44, Marin County Records.

B. **Encroachment:** Any tangible thing, natural or artificial, attached to the land lying within a right of way, and either occurring there naturally or placed there by an adjacent property owner or any other person.

C. **Obstruction:** Any obstacle, natural or artificial, which has the effect of hindering, obstructing, or preventing the normal and customary use of a right of way by the public, either of normal customary travel or of the drainage of rainwater according to the Mesa Drainage Map mentioned in paragraph III herein. *(as amended by Ordinance 33).*

In addition, any irregularity exceeding four inches in height or depth as measured against a straight span of ten (10) feet anywhere along or across a road is considered an obstruction, unless otherwise shown. *(as amended by Ordinance 37)*

D. **Normal and Customary use of a right of way:** Such use and non use by the public as has historically developed over past years up to the present.

E. **District:** The Bolinas Community Public Utility District

F. **Board:** the Board of Directors of the Bolinas Community Public Utility District

G. **Dangerous Tree:** Any tree or other plant which is capable and likely to fall or shed limbs such as to constitute a danger to persons or property, including but not limited to that which would amount to a public or a private nuisance. *(as amended by Ordinance 34)*

III. Maintenance and repair

A. Any person may maintain and repair the public right of way adjacent to his or her own private property consistent with normal and customary use and consistent with the specifications of that certain drainage map prepared by David Keith Todd Consulting Engineers, Inc., of Berkeley, California, and formally designated by the Board as "The Mesa Drainage Map."; provided, that the public right of way has not been designated as a Neighborhood Access Street on the November, 1995 Mesa Traffic Plan. Any section of road designated as a Neighborhood Access Street may be repaired or maintained by a person whose property is adjacent to such section of road if that person, after consultation with the appropriate local neighborhood road maintenance group, if any, has applied for and obtained permission from the BCPUD to perform such work. Said map is located at District's office, 390 Elm Road, Bolinas, California, 94924, and copies of relevant parts shall be available at cost.

Where said map may be in conflict with otherwise normal and customary use, said map shall control, provided however, that such control shall apply only to drainage ditches and culverts, and provided further, that the map shall not control where:

1. It be clearly shown that said map is in error; or

2. It be clearly shown that the purposes and intent of this ordinance will be equally or better served by a specifically proposed deviation from said map.

B. Such maintenance and repair may be either of traveled roadway or drainage ditch or both.

C. As to such maintenance set out in III A herein no express or written permission is required.

D. Maintenance or repair of the public right of way or any alteration there of other than adjacent to the private property of the person doing the same is prohibited except as follows:

1. Any person may apply in writing to the BCPUD for permission to do maintenance, repair, or other improvement to any right of way. No fee shall be charged for such application.

a. If, in the reasonable determination of the manager of the District, the application is for routine maintenance substantially the same as that already approved by the Board, he or she shall forthwith issue a written permit to the applicant setting out the scope of that which is permitted,

b. If the application is new or is different in scope, place, or other significant detail from previously permitted maintenance, the manager shall place the application on the agenda of the next regular meeting of the Board; provided, however, that if the proposed project meets the specifications of the Todd Drainage Plan (as said plan may be amended from time to time) and if, after due notice of the proposed project is given by the BCPUD to all persons reasonably anticipated to be affected by the project and no such person objects thereto, the manager may, upon making such findings as foresaid, issue a written permit setting out the scope of that which is permitted together with such terms and conditions as the manager may reasonably determine are required, without referring the project to the Board for determination.

2. In such cases as in III D I.b. above, the manager shall notify all persons residing and/or owning property adjacent to the place which is the subject of the application and all other persons reasonably anticipated to be affected by the same. The notices shall contain a copy or concise summary of the application and shall be mailed or otherwise delivered sufficiently in advance of the Board meeting or manager decision regarding the application to afford reasonable notice of the same. If, upon considering the application at a regular meeting, the Board determines the application to be:

a. Not in the public interest, then and in that event the Board shall deny the application,

b. In the public interest, then and in that event the Board shall grant the application upon such terms and conditions, if any, as the Board may determine the public interest requires.

3. Such permission must be in writing and shall set out the scope of that which is permitted together with any terms or conditions imposed by the Board.

(as amended by Ordinance 35)

E. The District, in the sole discretion of the Board of Directors may finance, in whole or in part, the maintenance, repair or alteration of a public right of way based upon, but not limited to, the following factors. No single factor is controlling.

1. There is financial participation by other(s).
2. The District's infrastructure would benefit.
3. Emergency vehicle access would be improved.
4. Inadequate drainage is:

- a. degrading the performance of nearby septic systems;
 - b. causing erosion of the roadway; or
 - c. [reserved]
5. The proposed maintenance, repair or alteration is on a Neighborhood Access Road per the 1995 Mesa Traffic Plan. (as amended by Ordinance 36)

IV. Encroachments:

A. Any encroachment in any right of way may be removed or abated by the District at any time, and the mere failure to so remove or abate, even if the encroachment be known to the District, shall not work a waiver by the District of any right the District may have.

V. Obstructions:

A. No person shall obstruct or place an obstruction in any right of way.

B. Any person aggrieved thereby may complain of any obstruction. Such complaint must:

- 1. be in writing,
- 2. be signed by the complainant, and

3 contain a statement of the thing or condition complained of, together with the name of the person responsible, if known.

C. Upon receipt of a complaint hereunder the manager shall make notification in the same manner as set out in Paragraph III.D.2. above.

D. If upon hearing the Board determine the thing or condition complained of to constitute an obstruction as that term is herein defined, then and in that event the Board shall order the obstruction removed or abated.

E. Upon ordering an obstruction removed or abated the Board shall make a determination that the costs of removal or abatement should in the interests of justice and fairness be born in whole or in part by the District or by such person as be found to have caused the obstruction, or by both, and shall instruct the manager accordingly.

F. The Manager shall prepare a written notice of the Board's Order. Such notices shall contain:

- 1. A statement of that which is ordered, and
- 2. A statement of the findings of ultimate conclusionary fact in support of the order. In addition to such ultimate facts the notice may contain a statement of the findings of such preliminary facts as the Board may direct.

G. Any person, after receiving written notice as provided in paragraph “F”, shall correct any violation(s) of any provision of this ordinance within the time limit, and to the degree specified in the notice. On a failure to do so, the District may pursue all legal remedies available to it in enforcing the provisions of this ordinance.

VI. Nothing herein shall be construed to prohibit the District from taking any action on any right of way on its own motion in order to safeguard District property and infrastructure, or in order to promote the public interest, health, or safety.

A. Dangerous trees in right of way:

1. There shall be a fund maintained on an annual basis for the purpose of removal of dangerous trees.

2. Subject to Board of Directors’ review, the General Manager shall choose which such trees shall be removed and allocate available funds for their removal according to the following criteria, no single one of which shall be controlling:

- a. the degree of harm or damage that might be done by the tree weighed against its likelihood of occurrence;
- b. the cost weighed against the benefit;
- c. whether or not there is an offer by a private party or parties to participate in the project by donating services, materials, or money;
- d. whether or not there is a demand or request by a private party or parties that the district remove a dangerous tree which threatens his or her person or property.

3. The General Manager shall publicize from time to time in such manner as he or she deem effective, the District’s purpose to remove such trees from its property and invite the public to notify the District of such trees.

(as amended by Ordinance 34)

VII. Things Prohibited on District Property

A. The depositing, placing, or the causing to be deposited or placed, of the following materials or substances on land owned by the District, including the gridded public right of way network on the Bolinas Mesa, is prohibited:

- 1. chemical pesticides;
- 2. refuse, such as wood chips, concrete rubble, asphalt rubble, scrap lumber, yard waste, or anything else unsuitable as road surface;
- 3. [reserved];
- 4. [reserved]; and
- 5. [reserved].

B. The District may recover the costs of removal of such materials or substances from the person or persons responsible, if known, by such means as may be appropriate under the circumstances.

C. Run-off from private property shall be treated as a placing, or causing to be placed, of the aforementioned prohibited materials or substances.

D. Nothing in this section (or otherwise in this Ordinance) shall be construed to prohibit that which otherwise required by law.
(as amended by Ordinance 35)

This ordinance shall be and is hereby declared to be in full force and effect from and after 30 days from the date of its passage and is hereby ordered publicly posted at least 7 days prior to end of said 30 day period.

The foregoing ordinance was passed and adopted on the 16th day of August, 1995, by the following vote:

AYES: Amoroso, McClellan, McNaughton, Pfeiffer, Siedman

NOES: None

ABSTAIN: None

ABSENT: None

Amended January 21, 1998; March 18, 1998; July 19, 2000; June 18, 2003 (*ord 33*); June 16, 2004 (*ord 34*); November 15, 2006 (*ord 35*), November 14, 2007 (*ord. 36*), October 21, 2009 (*ord. 37*)