



## **PUBLIC EASEMENTS**

### **A PROPERTY OWNERS GUIDE**

#### **A. GENERAL**

This brochure provides information for property owners regarding their responsibilities within areas of public easements on their properties. It is the responsibility of the property owner or agency to obtain all required construction, environmental and underground service (dig alert) permits.

#### **B. UNDERSTANDING PUBLIC EASEMENTS**

##### **1. Road Easements**

The purposes of road easements are to provide for current or future improved public roadways, to avoid land locked parcels, or for general public access. These easements are acquired through a number of ways. The most common are easements dedicated by property owner during the development process, court rulings, eminent domain, subdivision, by Patent Reservation, the exercise of prescriptive rights, and by voluntary action.

##### **1.1 County Maintained Roads Easements**

Easements for roads in the San Bernardino County Maintained Road System (CMRS) fall under the jurisdiction of the Department of Public Works (DPW).

**RESPONSIBILITY:** DPW is responsible for maintaining all roads accepted into the CMRS.

**USE BY UNDERLYING PROPERTY OWNERS:** It is preferred that no encroachments are constructed within any easement. However, if necessary, the underlying property owner shall apply for an encroachment permit and provide justification as to why the encroachment within the County easement is essential. Property owners can contact the Permits Section of County DPW at (909) 387-7995 or go online at [http://www.sbcounty.gov/dpw/operations/permits\\_road.asp](http://www.sbcounty.gov/dpw/operations/permits_road.asp) for more details.

**1.2 Non County Maintained Road Easements-** Road easements which are offered for dedication without County acceptance or are accepted by the County for public use but rejected for maintenance by the County are called non County maintained road easements.

**RESPONSIBILITY:** Underlying property owners are responsible for keeping these easements in compliance with the intent of the dedication requirement road easements, which are to be used for general public access, or for future public road improvements. These are public rights that are protected by law and any obstructions that cause a denial of such public rights can be removed at the property owner's expense through civil action.

**USE BY UNDERLYING PROPERTY OWNERS:** It is strongly recommended that no encroachments are constructed within any public easement. Any permitted work activity (e.g. grading) or encroachment that is constructed at the property owner's own risk. Any work inside these easements may be subject to one or more permits including grading permits, building and safety permits, environmental permits and permission from other property owners. Failure to comply may subject the offender to civil actions.

### **1.3 Obstruction of Public Road Easement**

Obstruction of any road easement may constitute a nuisance as defined in the California Civil Code:

*"Anything which... unlawfully obstructs the free passage of use... of any Public Park, square, street, or highway, is a nuisance."*

Property owners may be responsible for damages under provisions of the Civil Code. The California Penal Code also defines public nuisances in almost identical language (Section 370). The Penal Code goes on to say "Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor." (Section 372) The punishment for a misdemeanor is given in section 19: "Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six-months, or by fine, not exceeding one thousand dollars (\$1000), or by both.

### **1.4 Use of Public Road Easement by Utility Agencies**

Utilities placed in public right of way (maintained or not maintained) must demonstrate the right to be in public right of way via franchise agreement or previously acquired private utility easements. For non-maintained dedicated roads -no permit from DPW is required. As long as utility is a public utility and the utility doesn't impede the traveling public they are allowed to install facilities in the dedicated right of way.

For private utilities in a public right of way (maintained or not maintained) - a franchise agreement must be obtained, or the utility must be placed outside dedicated right of

way and a private easement must be obtained with adjacent property owners. No DPW permit is required if utility is outside road right of way or on a non-maintained dedicated public road.

For non-maintained roads with no dedication -these roads are considered private. No DPW permit is required. The utility must get private easements.

For maintained roads with no dedicated right of way - Road prescriptive right of way is typically to the edge of a disturbed area. Due to limited width of disturbance: Above ground utilities are to be placed beyond the disturbed area. It is strongly advised to contact DPW for the master plan right of way and place the utilities as close to the outside limit of the master plan right of way as possible to avoid future relocations if road is widened. The location may require a private utility easement from adjacent property owner. If above ground utility must be inside the disturbed limits, DPW will evaluate the location and determine if the obstruction will affect roadway maintenance and will issue a permit if maintenance will not be affected. Underground utilities require a permit from DPW if located within the disturbed limits.

## **2. DRAINAGE EASEMENTS**

The general purpose of drainage easements are to maintain the historical flow and alignment of storm water runoff, or to provide building setbacks. These easements are most commonly acquired through dedication by the property owner during the development process. Drainage easements generally follow natural watercourses and are generally not maintained by the County.

**RESPONSIBILITY:** The underlying property owners are responsible for maintaining drainage easements. Drainage easements must follow the historic flow path and must not be blocked or their capacities reduced in anyway.

**RESTRICTIONS OF USE BY UNDERLYING PROPERTY OWNERS:** It is strongly recommended that no encroachments be constructed inside a drainage easement as it may cause drainage/flood damage to neighboring properties. Disputes among neighboring property owners or even civil cases may occur as a result of such encroachments. Property owners who divert or block the historical flows may be liable for any damages caused by their actions to downstream properties.

## **3. VACATION OF PUBLIC EASEMENTS**

Under certain conditions, an existing public easement may no longer be necessary due to a variety of reasons such as changed conditions, topography, etc. The property owner can seek a

Vacation of an easement through the County Highway Planning Technical Committee (HPTC) by submitting an application and paying the applicable fees. Contact Design Division/Right-of-Way Section at 909-387-7951 for more details.

#### **4. PAVING NON-COUNTY MAINTAINED ROAD EASEMENT FOR PURPOSE OF COUNTY ASSUMING MAINTENANCE**

Any work on a non-County maintained road shall follow DPW standards and be constructed according to plans prepared by a registered civil engineer. Prior to any work performed, the property owner shall obtain an encroachment permit from DPW. If a property owner wishes to pave within a non-County maintained road easement and request that the County exercise its discretion to accept that road into the CMRS, the owner can consult the Permits Section of County DPW at (909) 387-7995.

#### **C. GENERAL RESTRICTIONS OF ENCROACHMENTS AND WORK ACTIVITY INSIDE NON COUNTY MAINTAINED PUBLIC EASEMENTS**

General restrictions include, but not limited to, the following:

1. Encroachments must not block the public right to pass thru the road easements.
2. Encroachments must not block, or cause restriction of, or divert drainage courses.
3. Structures (walls, drainage facilities, etc.) are still subject to building and safety requirements and permit requirements and must be designed by a registered engineer and constructed accordingly.
4. Buildings, accessory structures, and homes are not allowed to be constructed in the easement area.
5. Encroachments must not interfere with utilities.
6. Applicable environmental permitting maybe required.
7. In some cases, easements, acquisitions and/or agreement letters must be signed by neighboring parcels affected by the work activity or encroachment.
8. No septic/leach lines, etc. are allowed in the public easement.
9. The encroachment or work activity must be maintained by the applicant/property owner.
10. Tree removal needs environmental approval and potential public input.

#### **D. ENFORCEMENT (NON MAINTAINED PUBLIC EASEMENT)**

1. All work activities or building of structures, inside a non-County maintained public easement are subject to San Bernardino County Building Codes. Violations of County Building Codes are subject to the enforcement action by the Land Use Services Department.
2. Any permitted work activity or building of structures inside non County maintained road easement or drainage easement is done so at the property owner's own risk.

3. Non County maintained public easements, by definition, are not maintained by the County. The public and property owners are encouraged to resolve access and maintenance issues among affected parties.
4. If there is a complaint/report brought against a property owner regarding possible illegal encroachments on public easement, DPW staff will research the easement information and refer to the appropriate County department for action. Not all such complaints result in determinations of code violations and property owners are encouraged to seek resolutions acceptable to all involved parties.
5. Cases involving roads with no public dedication are private matters and property owners should be directed to pursue their legal rights as appropriate.

**E. ENFORCEMENT (MAINTAINED PUBLIC EASEMENT)**

1. Any work activity or building of structures inside a County maintained road easement requires a permit as described in the Section B.1.1 above.
2. If there is a complaint/report brought against a property owner regarding possible illegal encroachments within County maintained road easements, such complaints will be reviewed and evaluated by DPW staff. Notices will be mailed to subject property owners requiring proper remedial actions.