

BEFORE THE MARION COUNTY BOARD OF COMMISSIONERS  
ACTING AS THE GOVERNING BODY OF THE  
EAST SALEM SERVICE DISTRICT

An ordinance for the maintenance of the )  
drainage ditches of the East Salem Service )  
District, prohibiting dumping and trespass, )  
requiring permits for structures, repealing )  
Ordinance No. 875, and declaring an )  
Emergency. )

ORDINANCE NO. 1174

THE MARION COUNTY BOARD OF COMMISSIONERS, ACTING AS THE  
GOVERNING BODY OF THE EAST SALEM SERVICE DISTRICT, HEREBY ORDAINS  
AS FOLLOWS:

**SECTION 1. Title.**

This ordinance shall be entitled and may be cited as the “East Salem Service District  
Ditch Maintenance Ordinance.”

**SECTION 2. Repeal of Ordinance No. 875.**

Ordinance No. 875, the East Salem Service District (ESSD) “Anti-Dumping and Anti-  
Trespass Ordinance,” is hereby repealed.

**SECTION 3. Purpose and Authority.**

The purpose of this ordinance is to protect the public health, safety and welfare by  
keeping the ESSD drainage ditches open for the free flow of surface and storm water, by  
providing access for District personnel and equipment for the purposes of inspecting and  
maintaining its ditches and prohibiting trespass by unauthorized persons and materials, and by  
establishing permits for structures in, abutting, or over the drainage ditches and easements. The  
dumping of solid waste, discarded items and yard debris into the ditches, as well as structures  
built in, abutting or over the ditches are becoming increasing problems that threaten or impede

the free flow of water, threaten water quality, risk damage to adjacent property from flooding, impede the District's access to its ditches and add to the District's costs of maintaining ditches. Use of the District's ditches for unauthorized foot traffic, wheeled traffic and motorized traffic causes damages to the slope of the drainage ditches, thereby increasing maintenance expenses, and exposing the District to greater liability for personal injury and property damage. Therefore, this ordinance is adopted as a general legislative enactment pursuant to ORS 451.570 and ORS 198.510 to 198.600 to regulate the use of the ESSD drainage ditches and easements.

**SECTION 4. Definitions.**

- (1) **“Drainage ditch”** means all the drainage ditches, underground piping, open ditches, retention facilities and detention facilities lying within the easement boundaries of the East Salem Service District that are maintained by the District to drain storm and surface water.
- (2) **“Enter or remain unlawfully”** means:
  - (a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed, authorized or privileged to do so; or,
  - (b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge or by a law enforcement officer.
- (3) **“Fence”** means an unroofed barrier or an unroofed, enclosing structure such as masonry, ornamental iron, woven wire, wood pickets or solid wood, or any other material used as an unroofed barrier to light, sight, air or passage.
- (4) **“Permit”** means a written approval by the Director of Public Works or his designee in the manner prescribed by the Director. The permit shall include all special

provisions deemed necessary by Director, including but not limited to a removal agreement with the determination of any associated fees, such as recording fees, or associated costs incurred by the District.

- (5) **“Person in charge”** means the Marion County Director of Public Works or his designated representative, or any law enforcement officer.
- (6) **“Solid waste”** means all putrescible and nonputrescible waste, including but not limited to: garbage, rubbish, refuse, ashes, wastepaper and cardboard, sewage sludge, septic tank and cesspool pumping or other sludge; commercial, industrial, demolition and construction waste; motor vehicle parts; chemicals; lubricants; discarded home or industrial appliances; manure; vegetable or animal solid or semi-solid waste; leaves; grass clippings; yard debris of any kind; wood material; and dead animals or other waste, including useless or discarded materials.
- (7) **“Structure”** means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, regardless of whether it is wholly or partly above or below grade.
- (8) **“Trespass”** means a person entering or remaining unlawfully on or in a drainage easement, and a structure of any kind, any man-made object such as vehicles, household appliances, etc., or any obstructive vegetation or plantings in, on, over or encroaching into the drainage easement.

**SECTION 5. Prohibited Activities.**

- (1) No person shall enter upon or remain unlawfully on or in an ESSD easement;

- (2) No person shall dump or place solid waste, discarded materials, dirt or debris of any sort in an ESSD drainage ditch or on an ESSD easement;
- (3) No person shall place, construct or otherwise build a fence, retaining wall, structure or private crossing in, on, over, across or abutting an ESSD drainage ditch or easement without submitting a plan for the proposed ditch improvement to, and obtaining a permit from the ESSD.
- (4) No person shall maintain, or allow to remain, a pre-existing fence, retaining wall, structure or private crossing in, on, over, across or abutting an ESSD drainage ditch or easement that threatens or obstructs the free flow of water in the ditches, increases or causes erosion of the ditch banks or slopes, or negatively affects water quality.
- (5) No person shall fail to maintain access or allow reasonable access for District personnel and equipment to the District ditches or easements. Reasonable access includes, but is not limited to, providing hinged or swing gates in cross fences for District personnel and equipment to access District ditches and easements, and removal of structures, materials or vegetation that obstructs access.

**SECTION 6. Permit and standards for ditch improvement, fence or structure.**

- (1) An application for a permit may be made by the property owner, lessee, easement holder or other holder of a legal and lawful interest in the property, or by an agent of the applicant (e.g. contractor, sub-divider, builder, employee etc.). An application by an agent does not relieve the property owner, easement holder or other interest holder of any of the requirements or obligations made under the permit or this ordinance.

- (2) Fences, retaining walls, structures or private crossings in, on, across or abutting an ESSD drainage ditch or easement must be constructed to standards specified by the Director of Public Works, or his designee, so as to prevent obstruction of the free flow of water in the ditches, reduce or eliminate erosion of the ditch banks or slopes, protect water quality, and maintain reasonable access for District personnel and equipment to the ditches. Written construction plans or plans prepared by an engineer may be required by the Director to be submitted as part of the application, and approval of the plans, if so required, shall be considered as part of the permit process under this Ordinance.
- (3) A permit shall be obtained from the District by a person prior to constructing, building or placing any fence, retaining wall, structure or private crossing in, on, across or abutting an ESSD drainage ditch or easement. The application for a permit will be made in the form and manner approved by the Director, and shall include any special provisions deemed necessary by the Director.
- (4) No permit will be valid until signed by the Director or his designee. No work can begin in, on, across or abutting an ESSD drainage ditch or easement until the applicant has obtained a valid permit.
- (5) Failure to obtain a permit, or failure to construct to or comply with any of the terms and conditions of a permit, shall be sufficient cause for denial or cancellation of the permit and may result in the removal or repair of any fence, wall or structure at the owner's or applicant's expense, in addition to any penalties for violations of this ordinance or any other remedy authorized by law.

- (6) Property owners will be required to move, remove or repair failing structures or other safety hazards abutting an ESSD drainage ditch or easement.

**SECTION 7. Notice.**

- (1) Whenever a person in charge determines that a prohibited activity is occurring regarding an ESSD drainage ditch or easement, one or more signs may be posted at the location stating the prohibitions and penalties under this ordinance.
- (2) A person in charge may give written or verbal notification to any person violating the prohibitions of this ordinance.
- (3) Whenever a person in charge determines that an owner, lessee, easement holder or other holder of a legal and lawful interest in the property is violating the permit requirements or ditch improvement standards, a 30-day written notice shall be given specifying the deficiencies to be corrected within that time period.
- (4) Notwithstanding subsection (3), if the District governing body or its designee, determines that a hazard to public health, safety and welfare is created by the non-compliance with this ordinance, written notice may be given to the owner of the property ordering removal, repair, maintenance or other corrective action to eliminate the hazard within 24 hours after delivery of the notice.

**SECTION 8. Violations and Remedies.**

- (1) After a drainage ditch has been posted or a person has been notified in writing or verbally by a person in charge of the prohibitions of this ordinance, any person who violates this ordinance shall be subject to a civil penalty of \$250.00 per day. Each day an offense continues shall be considered a separate violation. Any person in charge may enforce this ordinance, as provided in ORS 198.600 (3).

- (2) In the event that the ESSD is required to use its own personnel and equipment or contract with a third party to remedy any violation of this ordinance, the District may assess against the property owner and lien the property for the costs of the work and labor or any other expense incurred by the District in connection therewith.
- (3) In addition to the penalties for violation of this ordinance, the District may take any other action or remedy authorized by law.

**SECTION 9. Savings Clause.**

If any section, paragraph, clause, sentence or provision of this ordinance is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this ordinance. The effect of such judgment shall be confined to that part immediately involved in the controversy in which such judgment or decree was entered. It is the intent of the governing body of the District to enact the remainder of this ordinance notwithstanding the parts declared to be unconstitutional or invalid.

**SECTION 10. Effective Date.**

This ordinance is necessary for the immediate preservation of the public health, safety and welfare, in that trespass, unauthorized dumping, as well as structures built in, on, over, across or abutting district ditches or easements that threaten or interfere with the free flow of water, threaten water quality, increase the risk of damage to adjacent property from flooding, increase erosion or damage to the District ditches, or impedes access to District ditches or easements by authorized personnel and equipment, have recently been discovered to be significant problems requiring immediate action before the onset of the water year and winter

weather and creating flood danger. Therefore, an emergency is declared to exist and this ordinance shall take effect immediately upon adoption.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

MARION COUNTY BOARD OF COMMISSIONERS  
ACTING AS THE GOVERNING BODY OF THE  
EAST SALEM SERVICE DISTRICT

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Chair

ATTEST:

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District Secretary