

County Line Special Utility District
Policy Governing Encroachment into, over, under and/or above CLSUD's
Easements and All Other Rights of Way, Rights of Entry and
Other Property Rights and Interests

Article 1. In General

Section 1.1. Application. This Policy applies to all potential and/or existing Encroachments into, over, under and/or above CLSUD's Property Interest currently owned or that are acquired in the future. This policy is intended to protect CLSUD's authority and ability to utilize its Property Interests for its public purposes.

Section 1.2. Definitions. In this Policy:

1.2.1. CLSUD means County Line Special Utility District.

1.2.2. CLSUD's Board means the Board of Directors of CLSUD.

1.2.3. CLSUD's legal counsel means CLSUD's general counsel, or as appropriate, CLSUD's special counsel for Property acquisitions.

1.2.4. Encroachment means any and all Facility owned or activities conducted by a Person other than CLSUD that currently or are contemplated to encroach onto or cross any part of CLSUD's Property Interest. Encroachment does not include an existing encroachment that CLSUD's General Manager in his or her sole discretion has determined to have existed before CLSUD acquired its Property Interest and there have been no changes to such encroachment since CLSUD acquired its Property Interest.

1.2.5. Facility means any paving; above-ground or below-ground utility lines, cables, poles, and other related infrastructure; fill; landscaping; fencing; any building or other structure; and any other improvement of any type.

1.2.5. General Manager means the person hired by CLSUD's Board as the seniormost manager delegated with various day-to-day responsibilities for CLSUD, including administration of this policy.

1.2.6. Person means any individual, business or governmental entity, trust, estate, association, or any other legal entity.

1.2.7. Property Interest includes any fee simple interest, permanent and temporary easement, right of way, right of entry, and all other contractual, personal property and real property right and interest currently held or in the future acquired by CLSUD.

1.2.8 Request for Encroachment or Request means that written request submitted to CLSUD requesting CLSUD's consideration and written approval of Encroachment as provided for in this policy.

Section 1.3. General Policy Statement. CLSUD's Board deems it necessary and appropriate to adopt this policy to establish a uniform approach to protecting CLSUD's Property Interests from existing, potential or actual Encroachment. Recognizing that there are often unique circumstances with any perceived, proposed, and/or actual encroachment, this policy is intended to be fair and reasonable to any Person responsible for a past or proposed Encroachment while ultimately reserving all legal authority to CLSUD to protect its Property Interests from Encroachment that

compromises CLSUD's statutory duties to provide continuous and adequate service to its customers.

Section 1.4. Purposes. The purposes of this Policy are:

- 1.4.1.** To ensure that sound business judgment is used in protecting CLSUD's Property Interests;
- 1.4.2.** To consider whether CLSUD can accommodate an Encroachment without compromising its need to protect its Property Interests; and
- 1.4.3** To administer its Encroachment program under this policy efficiently, economically, and in compliance with applicable laws.

Section 1.5. Authority to Administer and Make Decisions under this Policy.

- 1.5.1** The General Manager is responsible for evaluating and deciding whether to grant or deny Requests for Encroachment.
- 1.5.2** The General Manager may in his or her discretion defer evaluation and decision on a Request for Encroachment to CLSUD's Board.
- 1.5.3** The General Manager has authority to evaluate and make decisions to address any Encroachment that may have occurred or appear imminent if a Request for Encroachment has not been submitted.

Article 2. Process for Requesting and Determination of Approval or Denial of an Encroachment

Section 2.1. Request for Encroachment. Any Encroachment must be approved by CLSUD in writing before any Encroachment occurs and to allow an ongoing Encroachment to continue. If an unapproved Encroachment is under construction or already exists, the Person responsible for the Encroachment must still submit a written request for approval of the Encroachment within 15 (fifteen) calendar days after the date CLSUD notifies the Encroaching Person that CLSUD has become aware of the Encroachment.

2.1.1 Written Request for Encroachment. There is not a required form for the Request. However, the Request must be in writing and include the following information:

- a. name of the Person seeking approval of the Encroachment
- b. name of lead representative of the Requestor responsible for making decisions associated with the Request, including that individual's cell phone number, email address, office address and phone number, and proof of authority to act on behalf of the Requestor
- c. property description of the Encroachment area
- d. type of Encroachment (subsurface, surface or aerial)
- e. detailed description of the nature of the Encroachment, including a survey or formal sketch of the Encroachment that could be used in a document recordable at the County Deed Records
- f. length of time of the Encroachment (i.e., period of months or years or perpetual)

2.1.2 Administratively Incomplete Request. The General Manager will notify the Requestor in writing of what remains incomplete in the Request using best efforts and not later than 20 calendar days after receipt of the Request. The General Manager is not responsible for reviewing the Request until the General Manager determines that the Request is administratively complete.

Section 2.2. Determination of the Request. After the General Manager completes his or her review of the Request, one of the following determinations will be made by the General Manager or CLSUD's Board if the General Manager defers to CLSUD's Board:

2.2.1 Approval. An approval will be memorialized in writing by CLSUD's General Manager. The Request may be approved and may be subject to the Requestor's and CLSUD's execution of a document intended to memorialize the Encroachment and that can be recorded in the County Deed Records. This document may be prepared at CLSUD's discretion.

2.2.2 Denial. Any denial will be memorialized in writing by CLSUD's General Manager. The Request may be denied if CLSUD determines that the Request will unreasonably encumber CLSUD's Property Interest in CLSUD's sole discretion.

Article 3. Encroachment Fees

Section 3.1. Encroachment Application Fee: A non-refundable application fee of **\$350.00** shall be paid at the time an applicant submits a request for approval of an encroachment upon, over, under, or across any easement, right-of-way, facility, or other property interest of the District.

Section 3.2. Encroachment Investigation and Review Deposit:

In addition to the application fee, the applicant shall pay an initial deposit of **\$4,000.00** to cover costs incurred by the District in evaluating the request, including, but not limited to, engineering, legal, surveying, inspection, administrative, title review, and other professional or technical services. The District may require an additional deposit if the initial deposit is insufficient to cover the anticipated costs of completing the review. The applicant shall be responsible for all actual costs incurred by the District in connection with the encroachment request. Any unused portion of the investigation and review deposit shall be refunded to the applicant following final disposition of the request and payment of all costs incurred by the District. Amounts incurred in excess of the deposit shall be paid by the applicant prior to final approval or execution of any encroachment agreement. Payment of the applicable fees and deposits does not constitute approval of the encroachment. All requests remain subject to the requirements and approval procedures established in the CLSUD Encroachment Policy.

Article 4. CLSUD's Remedies to Address Unapproved Encroachment

Section 4.1. CLSUD's Remedies. If an unapproved Encroachment occurs and cannot be remedied to CLSUD's satisfaction, CLSUD has the right to seek injunctive and declaratory relief, to seek damages, and to pursue any and all remedies in law and equity in a court of appropriate jurisdiction and venue to protect CLSUD's Property Interest.

Section 4.2 Legal Counsel Support. When questions arise about this policy, or about specific Requests for Encroachment or instances of an unapproved Encroachment, the General Manager has discretion to consult with CLSUD's legal counsel for clarification and advice and to direct CLSUD's legal counsel to exercise CLSUD's remedies on CLSUD's behalf.