

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING DIVISION 22, RELATING TO FACILITIES BENEFIT ASSESSMENTS AND DEVELOPMENT IMPACT FEES.

~~**Article 1: Public Improvement and Assessment Proceedings**~~

~~**Division 22: Procedural Ordinance for Financing of Public Facilities in Planned Urbanizing Areas**~~

§61.2200 Purpose

- (a) ~~The City of San Diego, pursuant to the home rule provisions of Article 11, Section 5, of the California Constitution, may make and enforce all ordinances and regulations with respect to municipal affairs.~~
- (b) ~~The City of San Diego, pursuant to Article 11, Section 7, of the California Constitution, may make and enforce all local ordinances not in conflict with general laws.~~
- (c) ~~The purpose of this ordinance is to implement, in part, the City's General Plan, which establishes guidelines for future urban development in the City, including the financing of public facilities.~~
- (d) ~~The communities identified as Facilities Benefit Assessment Planning Areas, and Future Urbanizing Areas Planning Areas that are phase shifted,~~

~~in the City's General Plan are subject to this Division, until such time as all FBA funds are collected and expended in each individual community.~~

- (e) ~~The City's General Plan contains policies to maintain an effective facilities financing program to ensure the impact of new development is mitigated through appropriate fees and to address current and future public facility needs through a diverse funding and management strategy, including special assessment proceedings for local facilities. This Division is intended to establish procedures in furtherance of the City's General Plan policies by designating lands which will receive special benefits from the acquisition, construction and improvement of certain public facilities, and imposing assessments on land related to the special benefits received.~~

§61.2201 Areas of Benefit Authorized

~~In order that the burdens of the cost of constructing public facilities may be borne by all of the lands benefited thereby, Areas of Benefit may be designated and Facilities Benefits Assessments, as defined in Section 61.2202, chargeable to and against such lands may be imposed in accordance with procedures set forth in this Division.~~

§61.2202 Definitions

~~The definitions set forth in this section apply to the following terms as used in this Division:~~

- (a) ~~“Advance” means amounts expended by the City or other governmental entity toward the cost of a Public Facilities Project within or for the~~

benefit of an Area of Benefit and for which the City shall be reimbursed from Facilities Benefit Assessments;

- (b) “Area(s) of Benefit” means lands which are designated as receiving special benefits from the construction, acquisition, and improvement of Public Facilities Project(s) as established by a Resolution of Designation adopted by the City Council pursuant to this Division;
- (c) “Construction Permit” has the same meaning as stated in Section 113.0103;
- (d) “Capital Improvement Program” means a plan for the implementation and financing of Public Facilities Projects including but not limited to a schedule for the commencement of construction, the estimated cost of construction and the payment of Facilities Benefit Assessments;
- (e) “Construction” means design, acquisition of property, administration of construction contracts, actual construction and incidental costs related thereto;
- (f) “Contribution” means amounts expended by the City or other governmental entity toward the cost of a Public Facilities Project in relation to the general benefit received by the City from construction of the Public Facilities Project;
- (g) “Costs” mean amounts spent or authorized to be spent in connection with the planning, financing, acquisition and development of a Public Facilities Project including, without limitation, the costs of land, construction, engineering, administration, and legal and financial consulting fees;

- (h) ~~“Development” means the division of land, grading or original construction of an improvement to real property, which division of land, grading, or construction is of the type normally associated with urban development as opposed to agricultural activity;~~
- (i) ~~“Facilities Benefit Assessment(s)” means the amounts collected under the terms of this Division to provide funds for Public Facilities Project(s) which will benefit designated Areas of Benefit;~~
- (j) ~~“Public Facilities Project” means any and all public improvements the need for which is directly or indirectly generated by development, including but not limited to the following:~~
 - (1) ~~Water mains, pipes, conduits, tunnels, hydrants, and other necessary works and appliances for providing water service.~~
 - (2) ~~Lines, conduits and other necessary works and appliances for providing electric power service.~~
 - (3) ~~Mains, pipes and other necessary works and appliances for providing gas service.~~
 - (4) ~~Poles, posts, wires, pipes, conduits, lamps and other necessary works and appliances for lighting purposes.~~
 - (5) ~~Sidewalks, crosswalks, steps, safety zones, platforms, seats, statuary, fountains, culverts, bridges, curbs, gutters, tunnels, subways or viaducts, parks and parkways, recreation areas, including all structures, buildings and other facilities necessary to~~

~~make parks and parkways and recreation areas useful for the purposes for which intended.~~

- ~~(6) Sanitary sewers or instrumentalities of sanitation, together with the necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, tunnels, channels or other appurtenances.~~
- ~~(7) Drains, tunnels, sewers, conduits, culverts and channels for drainage purposes; with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, channels and appurtenances.~~
- ~~(8) Pipes, hydrants and appliances for fire protection.~~
- ~~(9) Breakwaters, levees, bulkheads, groins and walls of rock or other material to protect the streets, places, public ways and other property from overflow by water, or to prevent beach erosion or to promote accretion to beaches.~~
- ~~(10) Retaining walls, embankments, buildings and any other structures or facilities necessary or suitable in connection with any of the work mentioned in this section.~~
- ~~(11) Compaction of land, change of grade or contours, construction of caissons, retaining walls, drains and other structures suitable for the purpose of stabilizing land.~~
- ~~(12) Works, systems or facilities for the transportation of people, including rolling stock and other equipment appurtenant thereto.~~

- (13) ~~All other work auxiliary to that described in subparagraph (12) which may be required to carry out that work, including terminal and intermediate stations, structures, platforms or other facilities which may be necessary for the loading of people into and unloading of people from such transportation facilities.~~
- (14) ~~The grading or regrading, the paving or repaving, the planking or replanking, the macadamizing or remacadamizing, the graveling or regaveling and the oiling or reoiling of streets.~~
- (15) ~~Acquisition, construction, improvement and equipping of library buildings.~~
- (16) ~~Acquisition, construction, improvement and equipping of fire stations.~~
- (17) ~~Acquisition, construction, improvement and equipping of temporary and permanent school buildings.~~
- (18) ~~Acquisition, construction, improvement and equipping of police stations.~~
- (19) ~~Acquisition, construction and installation of traffic signs, signals, lights and lighting.~~
- (20) ~~Public works maintenance facilities.~~
- (21) ~~All other work auxiliary to any of the above which may be required to carry out that work including but not limited to the maintenance of Public Facilities Projects and administrative, engineering, architectural and legal work performed in connection~~

~~with establishing, implementing and monitoring Public Facilities Projects.~~

- (22) ~~Acquisition of any and all property, easements and rights-of-way which may be required to carry out the purposes of the project.~~

§61.2203 Initiation of Proceedings

~~Upon the receipt of an application by a landowner or his designated agent, or on its own motion, the City Council may initiate proceedings for the designation of an Area of Benefit by adopting a resolution stating its intention to do so. The City Council shall refer the proposed Public Facilities Project to the City Manager and shall direct said City Manager with the assistance of city agencies and, where appropriate, interested landowners to make and file with the City Clerk a report in writing which shall contain:~~

- (a)
 - (1) ~~An implementation program for future development and/or~~
 - (2) ~~a financing plan with respect to the proposed Public Facilities Project.~~
- (b) ~~A general description of the proposed Public Facilities Project.~~
- (c) ~~An estimate of the total cost of the Public Facilities Project(s) based on the projected time for commencement and completion thereof in accordance with the Capital Improvement Program.~~
- (d) ~~A Capital Improvement Program establishing a schedule for the timing of construction of the Public Facilities Project and the estimated costs therefor.~~

- (e) ~~A diagram showing the Area of Benefit to be designated and the boundaries and dimensions of the subdivision of land within the Area of Benefit.~~
- (f) ~~Preliminary information concerning the method pursuant to which the costs are proposed to be apportioned among the parcels within the Area of Benefit in proportion to the estimated benefits to be received by those parcels and a preliminary estimate of the amount of the Facilities Benefit Assessments which will be charged to each such parcel.~~
- (g) ~~The amount of the contribution or advance, if any, which the City or other public entity will make toward the total cost of the Public Facilities Project(s).~~

§61.2204 Resolution of Intention

~~Upon receipt of the Report described in Section 61.2203 the City Council may declare its intention to designate an Area of Benefit by adopting a Resolution of Intention which shall include the following:~~

- (a) ~~A definitive description of the specific Public Facilities Project, the cost of which is proposed to be charged to the properties located within the Area of Benefit;~~
- (b) ~~A Capital Improvement Program with respect to the Public Facilities Project(s);~~
- (c) ~~The proposed boundaries of the Area of Benefit;~~
- (d) ~~Information concerning the method by which the costs are proposed to be apportioned among the parcels within the Area of Benefit and an estimate~~

~~of the amount of the Facilities Benefit Assessments which will be charged to each such parcel;~~

- ~~(e) The basis and methodology by which automatic annual increases in the Facilities Benefit Assessment will be computed, assessed and levied, without the necessity for further proceeding pursuant to Section 61.2212 if, in the discretion of the City Council, such automatic annual increases are determined to be necessary.~~
- ~~(f) The amount of the contribution or advance, if any, which the City or other public entity will make toward the total cost; and~~
- ~~(g) The time and place at which the City Council will hold a hearing to consider designation of the Area of Benefit.~~

§61.2205 Notice of Hearing

~~Notice of hearing shall be provided by publication of the Resolution of Intention in a newspaper of general circulation at least two weeks before the date set for the hearing and by mailing copies of the Resolution of Intention to the owners of the properties located within the proposed Area of Benefit at the addresses shown on the last equalized assessment roll, or as otherwise known to the City Clerk; or by any other means which the City Council finds reasonably calculated to appraise affected landowners of the hearing.~~

§61.2206 Protests

~~At any time not later than the close of the public hearing, any owner of property within the proposed Area of Benefit may file a written protest against the Public Facilities Project proposed to be undertaken, or against the extent of the area to be~~

~~benefited by it, or against the Facilities Benefit Assessments proposed to be levied within the Area of Benefit or against any or all of the foregoing. The protest must be in writing, signed by the protester, and must contain a description of the property in which the signer is interested. The description must be sufficient to clearly identify the property. If the signer is not shown on the last equalized assessment roll as the owner of that property, the protest must contain or be accompanied by written evidence that the signer is the owner of the property. All such protests shall be delivered to the City Clerk, and no other protests or objections shall be considered. Any protest may be withdrawn by the owner's requesting the same, in writing, at any time prior to the conclusion of the public hearing.~~

§61.2207 Hearing

~~At the time and place established in the Resolution of Intention, the City Council shall hear and consider protests filed against the proposed Public Facilities Project, the extent of the Area of Benefit, the amount of the Facilities Benefit Assessments proposed to be levied within the Area of Benefit, or any or all of the foregoing. The hearing may be continued from time to time. If within the time when protests may be filed, there is filed with the City Clerk a written protest by the owners of more than one half of the area of the property proposed to be included within the Area of Benefit, and if sufficient protests are not withdrawn so as to reduce the area represented to less than one half, then the proposed proceedings shall be abandoned unless the protests are overruled by an affirmative vote of four fifths of the members of the City Council. The City~~

~~Council shall not overrule a majority protest unless it finds that the public health, safety or general welfare require that provision be made for the installation of the proposed Public Facilities Project(s). In the event a majority protest is not withdrawn or overruled, the City Council shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same Public Facilities Project under the provisions of this Division. If any majority protest which is not withdrawn or overruled is directed against only a portion of the Public Facilities Project, then all further proceedings under the provisions of this Division to construct that portion of the Public Facilities Project so protested against shall be barred for a period of one year; but the City Council shall not be barred from commencing new proceedings, not including any part of the Public Facilities Project so protested against. Nothing in this section shall prohibit the City Council within a one-year period, from commencing and carrying on new proceedings for the construction of a portion of the Public Facilities Project so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with such portion of the Public Facilities Project.~~

§61.2208 Resolution of Designation

~~At the conclusion of the hearing, and provided there is no majority protest or a majority protest is overruled, the City Council may adopt a Resolution of Designation ordering designation of the Area of Benefit and the establishment of the amount of the Facilities Benefit Assessment against each parcel within the Area of Benefit. The resolution shall include the following:~~

- (a) ~~A definitive description of the Public Facilities Project(s), the cost of which is to be charged to the properties located within the Area of Benefit;~~
- (b) ~~A Capital Improvement Program with respect to the Public Facilities Project;~~
- (c) ~~The boundaries of the Area of Benefit;~~
- (d) ~~The method by which the costs are to be apportioned among the parcels within the Area of Benefit and the amount of the Facilities Benefit Assessments which will be charged to each such parcel;~~
- (e) ~~The basis and methodology by which automatic annual increases in the Facilities Benefit Assessment will be computed, assessed and levied, without the necessity for further proceeding pursuant to Section 61.2212, if, in the discretion of the City Council, such automatic annual increases are determined to be necessary.~~
- (f) ~~The amount of the contribution or advance, if any, which the City or other public entity will make toward the total cost.~~

§61.2209 Filing of Map and Recording of Notice of Assessment as Lien

- (a) ~~After the adoption by the City Council of a Resolution of Designation, the City Manager shall prepare a map of the boundaries of the Area of Benefit based on said Resolution and file same with the City Clerk. The map shall be labeled substantially as follows: (here insert name or number of Area of Benefit) Area of Benefit, City of San Diego, San Diego County, State of California. The map shall also contain legends reading substantially as follows:~~

(1) Filed in the office of the City Clerk day of _____, 19 ____.

City Clerk, City of San Diego

(2) ~~Facilities Benefit Assessments were levied by the City Council on the lots, pieces and parcels of land shown on this diagram. Said assessments were levied on (month) (day), 19 ____ . Reference is made to the assessment roll recorded in the office of the City Clerk for the exact amount of each Facilities Benefit Assessment levied against each parcel of land shown on this diagram.~~

City Clerk, City of San Diego

(3) Filed on (month) (day), 19 _____, at in the office of the County Recorder of the County of San Diego, State of California.

~~County Recorder of County of San Diego~~

~~The clerk shall file a copy of the diagram referred to in this subparagraph in the office of the County Recorder of the County of San Diego upon payment of the filing fee.~~

(b) ~~After recording the assessment diagram in his office, the City Clerk shall execute and record a notice of assessment in the office of the County Recorder of San Diego. Such notice of assessment shall be in substantially the following form:~~

NOTICE OF ASSESSMENT

Pursuant to the requirements of Municipal Code Section _____ of San Diego, the City Clerk of the City of San Diego, State of California, hereby gives notice that a diagram and assessment were recorded in his office relating to the following described property:

(The real property in the Area of Benefit may be described by: (a) stating its exterior boundaries; (b) giving its description according to any official or recorded map or (c) referring to the diagram filed in accordance with paragraph (a) of this section and the book and page number in the office of the County Recorder of the filed plat or map.)

Notice is further given that upon the recording of this notice in the office of the County Recorder, the several Facilities Benefit Assessments assessed on the lots, pieces, and parcels shown on the filed diagram shall become a lien upon the lots or portions of lots assessed, respectively. Reference is made to the diagram and assessment roll recorded in the office of the City Clerk.

Dated: _____

City Clerk, City of San Diego

(e) From the date of the recording of the Notice of Assessment in accordance with the provisions of paragraph (b) of this section, all persons shall be deemed to have notice of the contents of such assessment. Immediately upon such recording in the office of the County Recorder each of the assessments shall be a lien upon the property against which it is made.

- (d) ~~In its discretion, and for good cause shown, the City Council may, upon terms and conditions prescribed by the City Council in its Resolution of Designation or thereafter, allow the lien of the facilities Benefit Assessment to become junior and subordinate to the lien of deed(s) of trust executed by landowners to secure loans to finance the construction of improvements on the property within the Area of Benefit.~~

§61.2210 Payment of Facilities Benefits Assessments

- (a) ~~Payment~~
- ~~After the adoption by the City Council of a Resolution of Designation, the Facilities Benefit Assessment for the Area of Benefit shall be paid by the Construction Permit applicant or landowner prior to the issuance of any Construction Permit issued or required for development that would benefit from the Public Facilities Projects.~~
- (b) ~~Partial Payment for Phased Development~~
- ~~In the event that a Construction Permit applicant or landowner desires to proceed with development of a portion of the property, based on a phased development program, which is subject to a lien for the total amount of Facilities Benefit Assessments as provided in this Division, the Construction Permit applicant or landowner may obtain Construction Permits for a particular development phase after paying a partial Facilities Benefit Assessment payment in an amount proportional to the amount of development occurring under that particular development phase to the satisfaction of the City Manager, plus the administrative processing fee, as~~

~~set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk. After a partial payment is made, the City Manager will release the existing Facilities Benefit Assessment lien in accordance with Section 61.2210(d), and shall record a new Facilities Benefit Assessment lien against the property with the revised Facilities Benefit Assessment amount.~~

~~(e) Payment Amount~~

~~The amount of Facilities Benefit Assessment due shall be determined by the City Manager by the actual type and size of the development permitted by the applicable Construction Permit, and by the applicable Facilities Benefit Assessment schedule in effect and on file in the Office of the City Clerk upon the issuance of Construction Permit(s).~~

~~(d) Use of Facilities Benefit Assessments~~

~~Money received by the City as payment of the Facilities Benefit Assessments shall be deposited in an interest earning special fund established for the Area of Benefit and shall thereafter be expended solely for the purposes for which it was assessed and levied.~~

~~(e) Release of Facilities Benefit Assessment Lien~~

~~Upon payment of Facilities Benefit Assessments as provided in this Division, the City Manager will release the lien which was attached to the land pursuant to Section 61.2209.~~

~~(f) Deferral of Facilities Benefit Assessment Payment in Certain Circumstances~~

~~Notwithstanding Section 61.2210(a), Construction Permits may be issued if the City Manager defers payment of the Facilities Benefit Assessments in accordance with this Section.~~

- ~~(1) Payment of Facilities Benefit Assessments may be deferred for a maximum period of two years from the effective date of a Fee Deferral Agreement, or until a final inspection is requested, whichever occurs earlier. A final inspection shall not occur, and where applicable no certificate of occupancy shall be issued, until the applicable Facilities Benefit Assessments are paid.~~
- ~~(2) Payment of Facilities Benefit Assessments may only be deferred if the applicable administrative processing fee, as set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk, is paid by the Construction Permit applicant or landowner.~~
- ~~(3) Payment of Facilities Benefit Assessments may not be deferred unless and until a Fee Deferral Agreement is entered into with the Construction Permit applicant or landowner to the satisfaction of the City Manager. The Fee Deferral Agreement shall be recorded against the applicable property in the Office of the San Diego County Recorder and shall constitute a lien for the payment of the Facilities Benefit Assessment. The Fee Deferral Agreement shall be binding upon, and the benefits of the agreement shall inure to, the parties, and all successors in interest, to the Fee Deferral Agreement.~~

- (4) ~~At the end of the Facilities Benefit Assessment deferral period set forth in Section 61.2210(f)(1), the deferred Facilities Benefit Assessments due shall be determined in accordance with Section 61.2210(c), except that the Facilities Benefit Assessment shall be determined by the Facilities Benefit Assessment rate for the year in which the Facilities Benefit Assessment is actually paid as set forth in the Facilities Benefit Assessment fee schedule in effect when the Fee Deferral Agreement was executed by the City, or the Facilities Benefit Assessment fee schedule approved by the City Council for a subsequent update or amendment of the applicable public facilities financing plan, whichever is lower.~~

§61.2211 Recordation of Notice of Pendency of Sale or Foreclosure

~~Where there is a delinquency in payment of the Facilities Benefit Assessments as required by Section 61.2210, the City may initiate foreclosure proceedings in accordance with the procedures set forth in this Section and in any and all applicable state and local laws. If a sale or foreclosure is commenced, notice of the pendency of such sale or foreclosure shall be recorded with the County Recorder of San Diego County not later than 10 days after commencing an action or proceeding in any court to foreclose the lien of such assessment. The notice of pendency shall state that the City of San Diego has commenced a sale or foreclosure, as the case may be, and shall refer to and identify such sale or foreclosure and shall describe the property affected thereby. The City shall be entitled to recover the cost of recordation of any such notice of pendency in any~~

sale or foreclosure resulting from such delinquency and provision therefor shall be made in any notice, order or judgment authorizing or providing of such sale or foreclosure.

§61.2212 Annual Adjustment of Facilities Benefit Assessments

The City Council may, annually after the adoption of the Resolution of Designation and subject to the requirements, set forth in Sections 61.2203 through 61.2209, cause an adjustment to be made in the Facilities Benefit Assessments established by the Resolution. The adjustments may reflect increases or decreases in the actual cost of the Public Facilities Project or if the Public Facilities Project has not yet been constructed then the estimated cost of the proposed capital improvements as reflected in changes in the scope of the Public Facilities Project or any other indices as the City Council may deem appropriate for this purpose. The modifications may also reflect changes in the improvements proposed to be constructed as well as the availability or lack thereof of other funds with which to construct the capital improvements.

§61.2213 Consideration in Lieu of Assessment

The provisions of Section 61.2210 to the contrary notwithstanding, upon application by the landowner or his authorized agent, the City Council may accept consideration in lieu of the Facilities Benefit Assessments required pursuant to this Division, provided the City Council, upon recommendation of the City Manager, finds that the substitute consideration proposed: (1) has a value equal to or greater than such Facilities Benefit Assessments, (2) is in a form acceptable to the City Council and (3) is within the scope of the Public Facilities Project.

~~The City Council may accept consideration in lieu of the Facilities Benefit Assessments required pursuant to this Division where the City Council finds that the substitute consideration proposed is less than the value of such Facilities Benefit Assessment after payment of an amount equal to the difference between the value of the substitute consideration as determined by the City Council and the amount of such Facilities Benefit Assessments.~~

§61.2214 Termination of Area of Benefit

~~Upon the receipt of an application by a landowner or his designated agent, or on its own motion, the City Council may initiate proceedings for the termination of an Area of Benefit by adopting a resolution stating its intention. The Resolution of Intention shall state the time and place at which the City Council will hold a hearing to consider such termination. If, at the conclusion of such hearing, the City Council finds and determines that the Public Facilities Project for which the area was originally formed will not be required in the reasonably foreseeable future, or that the installation of said Public Facilities Project may be financed more effectively by another method, the City Council may adopt a resolution declaring the Area of Benefit terminated.~~

§61.2215 Reimbursement and Refund

(a) ~~In the event of an annual adjustment of assessment as provided by Section 61.2212, which reduces the Facilities Benefit Assessment, amounts in the special fund which are no longer required shall be refunded to the current owner(s) of the property as shown on the last equalized assessment roll in proportion to the amount of the original payments.~~

- (b) ~~In the event the City Council agrees to accept consideration in lieu of Facilities Benefit Assessments as provided by Section 61.2213, the value of which the City Council finds is greater than the amount of the otherwise applicable Facilities Benefit Assessments, the Council may enter into an agreement with a developer pursuant to which said developer may be reimbursed for the amount of the otherwise applicable Facilities Benefit Assessments. The agreement shall set forth the amount to be reimbursed, and the time and manner in which payments shall be made only from revenues paid into the special fund created for the Area of Benefit.~~
- (c) ~~Upon termination of an Area of Benefit as provided by Section 61.2214, any money remaining in the special fund established in connection therewith shall be refunded to the current owner(s) of the property as shown on the last equalized assessment roll in proportion to the amount of the original payments.~~

§61.2216 Alternative Method

~~This Division is intended to establish an alternative method for the spreading of the costs of certain public improvements against the lands which will be benefited thereby; and the provisions of this Division shall not be construed to limit the power of the City Council to utilize any other method for accomplishing this purpose but shall be in addition to any other requirements which the City Council is authorized to impose as a condition to approving new development pursuant to state and local laws.~~

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