

ORDINANCE NUMBER O- 18617 (NEW SERIES)

ADOPTED ON FEB 01 1999

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER VI, ARTICLE 5, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 65.0202, 65.0212, AND 65.0214; ALL PERTAINING TO MAINTENANCE ASSESSMENT DISTRICTS.

WHEREAS, pursuant to Chapter VI, Article 5, Division 2, of the San Diego Municipal Code, a Non-profit Corporation may be authorized to administer Contracts for Goods and Contracts for Services for Maintenance Assessment Districts; and

WHEREAS, under current law, a Non-profit Corporation is not authorized to administer Contracts for Goods and Contracts for Services for a Zone within a Maintenance Assessment District; and

WHEREAS, it is desired to amend Chapter VI, Article 5, Division 2 of the San Diego Municipal Code to permit a Non-profit Corporation on a one-year trial basis to administer Contracts for Goods and Contracts for Services within Zone 3 of the Downtown Landscape and Lighting Maintenance District to evaluate the feasibility of such administration; and

WHEREAS, it has been determined that additional oversight provisions need to be undertaken by the City by amending the Municipal Code with respect to Non-profit Corporations administering Contracts for Goods and Contracts for Services for Maintenance Assessment Districts; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VI, Article 5, Division 2 of the San Diego Municipal Code is hereby amended by amending Section 65.0202 to read as follows:

**SEC. 65.0202 Definitions**

The terms defined in Chapter VI, Article 5, Division 2 are indicated by capital letters. The following words and phrases whenever used in Chapter VI, Article 5, Division 2, shall be construed as defined in this section:

“Assessment” through “Special Benefit” [No change.]

“Zone” means Zone 3 of the Downtown Landscape and Lighting Maintenance District.

Section 2. That Chapter VI, Article 5, Division 2 of the San Diego Municipal Code is hereby amended by amending Section 65.0212 to read as follows:

**SEC. 65.0212 Support of Property Owners for Administration by Non-Profit Corporations**

(a) Except as otherwise provided in Section 65.0212(b) or 65.0212(c), any Non-profit Corporation wishing to establish the right to administer Contracts for Goods or Contracts for Services for a District shall provide written documentation to the City Manager verifying that property owners representing at least a majority of the parcel area of the relevant District support the Non-profit Corporation assuming responsibility for administration of Contracts for Goods and Contracts for Services for the District. The written documentation shall contain the name, signature, address, and parcel number of each property owner signing the documentation. The City Manager shall verify the contents of the documentation.

(b) Any Non-profit Corporation wishing to establish the right to administer Contracts for Goods or Contracts for Services for the Zone shall submit a notice to the property owners within the Zone that it wishes to establish such administration. The notice shall also contain a ballot that allows property owners to vote on whether they support or oppose having the Non-profit Corporation administer Contracts for Goods or Contracts for Services for the Zone. Each ballot shall contain the name, address, and parcel number of the relevant property owner, a place for the property owner to register his or her support or opposition to such administration and a place for the property owner to sign the ballot. The ballots shall be returned to the City Manager. The City Manager shall tabulate the ballots. All costs of mailing and printing the ballots, and all costs incurred by the City in administering mailing, printing, and tabulating the ballots shall be paid by the Non-profit Corporation.

If a majority of property owners returning ballots, weighted by the dollar amount of their assessments, vote in favor of the Non-profit Corporation administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation may assume such administration thirty (30) days after the tabulation of the ballots.

- (1) The Non-profit Corporation shall administer the Zone for one (1) year.
- (2) After one year, if the Non-profit Corporation desires to continue administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation shall submit in writing a request to

the City Manager to continue such administration. The City Manager shall submit the Non-profit Corporation's request to the City Council for review. The City Council may authorize the Non-profit Corporation to continue the administration of the Zone for additional time.

(c) Upon the submission of the documentation required pursuant to Section 65.0212(a) or upon approval by the property owners of a District pursuant to Section 65.0212(b), the City Manager shall docket for City Council review a resolution authorizing the City Manager to enter into the agreement with the Non-profit Corporation to administer Contracts for Goods and Contracts for Services for such District or for the Zone.

(1) [No change.]

(2) The agreement shall provide that the Non-profit Corporation shall obtain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney, naming the City as an additional insured. The Non-profit Corporation shall provide the City Manager a copy of a certificate of such insurance each year.

(3) through (4) [No change.]

(5) The agreement shall provide that the City Manager shall conduct at least four (4) on-site inspections of the District or the Zone each year. In the event the City Manager determines from such inspections that the District or the Zone is not being properly administered by the Non-profit Corporation, the City Manager shall report such findings to the City

Council. The cost of any inspections conducted by the City Manager shall be paid by the District or the Zone.

(6) The agreement shall provide that the Non-profit Corporation agrees that it shall not have a financial interest in any contract awarded for such District or the Zone.

(7) The agreement shall provide that the Non-profit Corporation agrees to conduct at least one (1) noticed meeting with property owners within the District or the Zone and to attempt to meet on a regular basis with the relevant community planning group or designated representatives of the District or the Zone, and property owners within the District or the Zone, to finalize plans and specifications for the Improvements and Maintenance of the District or the Zone, to evaluate the performance of any Maintenance contractor for the District or the Zone, and to advise the Non-profit Corporation regarding the Improvements and regular Maintenance for the District or the Zone. For any such meeting, the Non-profit Corporation shall use its best efforts to contact either orally or in writing the relevant community planning group or designated representatives of the District or the Zone, and community newspapers, if any.

(8) The agreement shall provide that the Non-profit Corporation is required to submit to the City Manager a budget for the Improvements and Maintenance for the District or the Zone no later than March 1 of each year for the following Fiscal Year.

(9) The agreement shall provide that the Non-profit Corporation shall maintain separate books and records for the District or the Zone which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego and the City or its designee shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by this agreement. The Non-profit Corporation shall maintain such books and records for a period of three years following completion of the agreement. The District or Zone shall pay for the costs of the audit.

(10) The agreement between the City and the Non-profit Corporation may be renewed, at the City's sole option, each year.

(d) After receiving the budget for a District or the Zone from a Non-profit Corporation, the City Manager shall order the preparation of an Engineer's Report. The City Manager shall also docket for City Council review the Engineer's Report and a resolution of intention to levy the Assessments for the District or the Zone.

(e) [No change.]

(f) The City Council may terminate the agreement with the Non-profit Corporation at any time provided:

(1) and (2) [No change.]

(3) a notice of the public hearing is mailed at least fifteen (15) calendar days prior to the public hearing to each property owner within the District or the Zone; and,

(4) the City Council determines at the conclusion of the public hearing that it is in the best interests of the District or the Zone to terminate the agreement with the Non-profit Corporation.

Upon the termination of the agreement with the Non-profit Corporation, the City Manager shall resume administration of Contracts for Goods and Contracts for Services for the District or the Zone.

Section 3. That Chapter VI, Article 5, Division 2 of the San Diego Municipal Code is hereby amended by amending Section 65.0214 to read as follows:

**SEC. 65.0214 Contracts Awarded by Non-Profit Corporations**

(a) Contracts for Goods and Contracts for Services administered by a Non-profit Corporation shall be awarded by the Non-profit Corporation on the basis of the low acceptable bid that best meets the respective District's or the Zone's requirements as provided below:

(1) through(4) [No change.]

(b) A Non-profit Corporation may consider the following factors in evaluating whether a bid or proposal best meets the respective District's or the Zone's requirements and gains the best economic advantage for the District or the Zone: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and

responsibility of the bidder, and any additional factors the Non-profit Corporation deems relevant.

(c) Notwithstanding the provisions of Section 65.0214(a) and (b), a Maintenance Contract for a District or the Zone may be awarded to other than the low acceptable bidder if the Non-profit Corporation receives a protest from the relevant community planning group or designated representatives of a District or the Zone, or other property owners within the District or the Zone, in accordance with the provisions of Sections 65.0214(c)(1) or (2).

(1) In order to protest the award, the relevant community planning group or designated representatives of the District or the Zone must submit to the Non-profit Corporation, no later than forty-five (45) calendar days after the announcement of the determination of the low acceptable bidder, a written protest stating the reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder. In the event the District or the Zone has fewer than five hundred (500) parcels located within its boundaries, then the written protest of the community planning group or designated representatives of the District or the Zone must be signed by property owners representing at least twenty-five percent (25%) of the parcel area of the District or the Zone.

(2) In order for other property owners within the District or the Zone to protest the award, the property owners must submit to the Non-profit Corporation, no later than forty-five (45) calendar days after the



announcement of the low acceptable bidder, a written protest signed by property owners representing at least twenty-five percent (25%) of the parcel area of the District or the Zone, stating the reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder.

(d) In the event the Non-profit Corporation receives a valid written protest pursuant to Sections 65.0214(c)(1) or (2), the Non-profit Corporation shall conduct a noticed meeting with property owners in the District or the Zone to review any protests and hear any public testimony. Notices shall be given by notifying the relevant community planning group or designated representatives of the District or the Zone, and by notifying community newspapers serving the area, if any. After reviewing any protest and hearing any public testimony, and upon a determination that the Maintenance Contract should be awarded to other than the low acceptable bidder, the Non-profit Corporation may award the contract to other than the low acceptable bidder.

Section 4. That the City Clerk is hereby instructed to insert the effective date of this ordinance, when known, in the blank spaces in Section 65.0212(a).

Section 5. That one year after the effective date of this ordinance, the definition of "Zone" in Section 65.0202 and all references to the "Zone" in Sections 65.0212 and 65.0214 added by this ordinance shall also expire.

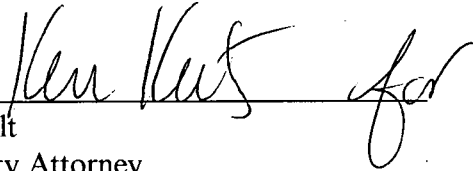
Section 6. That one year after the effective date of this ordinance, the amendments to Sections 65.0202, 65.0212(a), 65.0212(c), 65.0212(c)(6), 65.0212(c)(7), 65.0212(c)(8), 65.0212(d), 65.0212(f), and 65.0214 made in this ordinance shall expire and the provisions of

Sections 65.0202, 65.0212(a), 65.0212(c), 65.0212(c)(6), 65.0212(c)(7), 65.0212(c)(8), 65.0212(d), 65.0212(f), and 65.0214 shall read as they appeared before this ordinance took effect. The amendments to Sections 65.0212(b), 65.0212(c)(2), 65.0212(c)(5), and 65.0212(c)(9) shall remain in effect unless amended by separate ordinance adopted after this ordinance. The City Clerk is hereby instructed to make the necessary changes in the Municipal Code at that time.

Section 7. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By   
Kelly J. Salt  
Deputy City Attorney

KJS:pev  
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12/18/98 Rev.1  
12/21/98 Cor.Copy 1  
Or.Dept.Fin.&Tech.Svcs.  
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OLD LANGUAGE: ~~STRUCK OUT~~  
NEW LANGUAGE: REDLINED

(O-99-79 REV.1) COR. COPY 1

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“Zone” means Zone 3 of the Downtown Landscape and Lighting Maintenance District.

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(b) ~~If a ballot protest procedure is conducted to form a new District and levy Assessments, or to increase Assessments for an existing District, a Non-profit Corporation wishing to establish the right to administer Contracts for Goods and Contracts for Services for a District may request that the ballot submitted to the property owners include an item on the ballot that allows property owners to vote on whether they support or oppose having the Non-profit Corporation administer such contracts. The Non-profit Corporation shall submit its request to place such item on the ballot at least thirty (30) calendar days prior to the resolution to form a District or levy Assessments is scheduled to be heard before City Council. Any Non-profit Corporation wishing to establish the right to administer Contracts for Goods or Contracts for Services for the Zone shall submit a notice to the property owners within the Zone that it wishes to establish such administration. The notice shall also contain a ballot that allows property owners to vote on whether they support or oppose having the Non-profit Corporation administer Contracts for Goods or Contracts for Services for the Zone. Each ballot shall contain the name, address, and parcel number of the relevant property owner, a place for the property owner to register his or her support or opposition to such administration and a place for the property owner to sign the ballot. The ballots shall be returned to the City Manager. The City Manager shall tabulate the ballots. All costs of mailing and printing the ballots, and all costs incurred by the City in administering mailing, printing, and tabulating the ballots shall be paid by the Non-profit Corporation. If a majority of the property owners returning ballots, weighted by the dollar amount of their assessments, vote in favor of having the Non-profit Corporation administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation shall may assume such administration thirty (30) days after the tabulation of the ballots.~~

- (1) The Non-profit Corporation shall administer the Zone for one (1) year
- (2) After one year, if the Non-profit Corporation desires to continue administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation shall submit in writing a request to the City Manager to continue such administration. The City Manager shall submit the Non-profit Corporation's request to the City Council for review. The City Council may authorize the Non-profit Corporation to continue the administration of the Zone for additional time. If a majority of property owners returning ballots, weighted by the dollar amount of their assessments, vote in favor of the Non-profit Corporation administering Contracts for Goods and Contracts for Services for the Zone, the Non-profit Corporation shall assume such administration within thirty (30) days of the tabulation of the ballots.

(c) Upon the submission of the documentation required pursuant to Section 65.0212(a) or upon approval by a majority of the property owners of a District pursuant to Section 65.0212(b), the City Manager shall docket for City Council review a resolution authorizing the City Manager to enter into the agreement with the Non-profit Corporation to administer Contracts for Goods and Contracts for Services for such District or for the Zone.

(1) [No change.]

(2) The agreement shall provide that the Non-profit Corporation shall obtain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney, naming the City as an additional insured. The Non-profit Corporation shall provide the City Manager a copy of a certificate of such insurance each year.

(3) through (4) [No change.]

(5) The agreement shall provide that the City Manager shall conduct at least four (4) on-site inspections of the District or the Zone each year. In the event the City Manager determines from such inspections that the District or the Zone is not being properly administered by the Non-profit Corporation, the City Manager shall report such findings to the City Council. The cost of any inspections conducted by the City Manager shall be paid by the District or the Zone.

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~~(6)~~(7) The agreement shall provide that the Non-profit Corporation agrees to conduct at least one (1) noticed meeting with property owners within the District or the Zone and to attempt to meet on a regular basis with the relevant community planning group or designated representatives of the District or the Zone, and property owners within the District or the Zone, to finalize plans and specifications for the Improvements and Maintenance of the District or the Zone, to evaluate the performance of any Maintenance contractor for the District or the Zone, and to advise the Non-profit Corporation regarding the Improvements and regular Maintenance for the District or the Zone. For any such meeting, the Non-profit Corporation shall use its best efforts to contact either orally or in writing the relevant community planning group or designated representatives of the District or the Zone, and community newspapers, if any.

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(e) [No change.]

(f) The City Council may terminate the agreement with the Non-profit Corporation at any time provided:

(1) and (2) [No change.]

(3) a notice of the public hearing is mailed at least fifteen (15) calendar days prior to the public hearing to each property owner within the District or the Zone; and,

(4) the City Council determines at the conclusion of the public hearing that it is in the best interests of the District or the Zone to terminate the agreement with the Non-profit Corporation.

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(c) Notwithstanding the provisions of Section 65.0214(a) and (b), a Maintenance Contract for a District or the Zone may be awarded to other than the low acceptable bidder if the Non-profit Corporation receives a protest from the relevant community planning group or designated representatives of a District or the Zone, or other property owners within the District or the Zone, in accordance with the provisions of Sections 65.0214(c)(1) or (2).



(1) In order to protest the award, the relevant community planning group or designated representatives of the District or the Zone must submit to the Non-profit Corporation, no later than forty-five (45) calendar days after the announcement of the determination of the low acceptable bidder, a written protest stating the reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder. In the event the District or the Zone has fewer than five hundred (500) parcels located within its boundaries, then the written protest of the community planning group or designated representatives of the District or the Zone must be signed by property owners representing at least twenty-five percent (25%) of the parcel area of the District or the Zone.

(2) In order for other property owners within the District or the Zone to protest the award, the property owners must submit to the Non-profit Corporation, no later than forty-five (45) calendar days after the announcement of the low acceptable bidder, a written protest signed by property owners representing at least twenty-five percent (25%) of the parcel area of the District or the Zone, stating the reasons for their opposition to the award to the low acceptable bidder and the reasons in support of awarding to other than the low acceptable bidder.

(d) In the event the Non-profit Corporation receives a valid written protest pursuant to Sections 65.0214(c)(1) or (2), the Non-profit Corporation shall conduct a noticed meeting with property owners in the District or the Zone to review any protests and hear any public testimony. Notices shall be given by notifying the relevant community planning group or designated representatives of the District or the Zone, and by notifying community newspapers serving the

area, if any. After reviewing any protest and hearing any public testimony, and upon a determination that the Maintenance Contract should be awarded to other than the low acceptable bidder, the Non-profit Corporation may award the contract to other than the low acceptable bidder.

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