

ORDINANCE NUMBER O- 19335 (NEW SERIES)

ADOPTED ON NOV 22 2004

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 2, DIVISION 2, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING AND RENUMBERING SECTION 62.0208 TO SECTION 142.0680, ALL RELATING TO COST REIMBURSEMENT DISTRICTS.

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

Section 1. That Chapter 6, Article 2, Division 2, of the San Diego Municipal Code is amended by amending and renumbering section 62.0208 to section 142.0680, to read as follows:

§142.0680 Cost Reimbursement District Regulations

- (a) Cost Reimbursement District Regulations. This section shall be known as the "Cost Reimbursement District Regulations."
- (b) Purpose and Intent. In the course of developing property, whether through the subdivision process or the development or redevelopment of previously subdivided properties, it is frequently necessary or desirable to require the developer to install certain *public improvements*, dedicated for public use, that are supplemental in size, capacity, number, or length to those *public improvements* normally required to benefit the development, for the benefit of property not within the subdivision or development. The purpose of the Cost Reimbursement District Regulations is to establish requirements and procedures for reimbursement to either the developer or the City, or both, by those property owners who subsequently benefit from

the *public improvements* to the extent of their benefit. It is the intent of the Council that property owners who develop their property and subsequently benefit from the *public improvements* make the appropriate reimbursements to the developer or City, or both. It is further the intent of the Council that the Cost Reimbursement District Regulations shall be supplemental to the reimbursement procedures set forth in the California State Subdivision Map Act Government Code sections 66485 and 66486.

(c) When a Cost Reimbursement District May Be Formed.

- (1) A developer may apply to initiate the formation of a cost reimbursement district when the developer elects or is required by the City to install or replace *public improvements* which are supplemental in size, capacity, number, or length to those *public improvements* required to accommodate the development, for the benefit of property outside of the development, and will be dedicated to the public.
- (2) A cost reimbursement district shall not be formed if construction of the *public improvements* has been completed and accepted by the City Engineer prior to the application for the cost reimbursement district, or if the costs of the *public improvements* will later be reimbursed through an assessment district.
- (3) The City may initiate the formation of a cost reimbursement district whenever the City participates in the costs of *public*

*improvements*, which will benefit property other than, or in addition to, the developer's property.

(d) General Cost Reimbursement District Regulations.

- (1) The developer shall submit an application requesting initiation and formation of a cost reimbursement district. The application shall be in writing and shall be accompanied by an application deposit, which shall be set by City Council resolution.
- (2) The City Engineer shall process the request and recommend to the City Council whether to initiate the cost reimbursement district.
- (3) The application deposit shall be deposited in a fund established by the City Auditor and Comptroller for each cost reimbursement district. The deposit shall be that amount sufficient to cover administrative and engineering expenses associated with the initiation, formation and monitoring of the cost reimbursement district, including calculation of the costs attributable to the *public improvements* which benefit areas outside the development area, determination of the development area benefited by the *public improvements*, determination of the proposed spread of the costs attributable to the *public improvements* which benefit those parcels outside the development area, an accounting of funds, publication and mailings of notices associated with the initiation or formation of the cost reimbursement district, recordation, and similar costs.

(e) Cost Reimbursement District Resolution of Initiation.

Upon recommendation by the City Engineer, the City Council, in its sole discretion, may adopt a "Resolution of Initiation," approving the initiation of a cost reimbursement district and a reimbursement agreement with the developer.

(f) Actions Necessary to Form a Cost Reimbursement District

(1) Engineer's Report. After the City Council initiates the cost reimbursement district, the City Engineer may consult with the developer and thereafter, shall file with the City Clerk an engineer's report which shall include the following:

- (A) A plat indicating the proposed boundaries of the cost reimbursement district which identifies all parcels within the cost reimbursement district;
- (B) The actual or total estimated cost of the *public improvements*; and.
- (C) An estimate of the assessment and methodology necessary to equitably distribute the costs attributable to the *public improvements* that benefit areas outside the development area, to the benefiting properties. Benefit may be obtained and calculated by frontage, equivalent dwelling units, average daily trips, proximity to the *public improvements*, or other similar means determined by the City Engineer.

(2) Notice and Hearing on Formation of Cost Reimbursement District.

(A) Upon receiving the request from the City Engineer to set a hearing on formation of a cost reimbursement district, the City Clerk shall set a noticed public hearing before the City Council.

(B) The City Clerk shall cause a notice of the hearing, in substantially the following form, to be published once in a newspaper of general circulation in the City at least ten (10) calendar days prior to the hearing:

**NOTICE OF HEARING**

The City Council of the City of San Diego will hold a public hearing at \_\_\_\_\_ on \_\_\_\_\_ at the City Council Chambers on the 12th Floor of the City Administration Building, 202 C Street, San Diego, California, 92101 to consider the establishment of a reimbursement district for the financing of certain public facilities and related improvements within the City otherwise known as the Cost Reimbursement District No. (\_\_\_\_\_).

Your property is located within the proposed boundaries of the cost reimbursement district and may be subject to a lien to pay a portion of the cost of providing such facilities. If, within a twenty-year period from the date of forming this district, you either file a final map or are issued a building permit, the lien amount will become due and payable. Payment of the lien under these reimbursement proceedings shall not be required in the following circumstances:

- (a) For issuance of a building permit for improvements to an existing residential dwelling unit.
- (b) For issuance of a building permit for the addition of accessory structures to an existing dwelling unit provided the accessory structure is not a companion unit.
- (c) For issuance of a building permit to replace an existing dwelling unit provided the density on the lot is not increased.
- (d) For issuance of a building permit to replace existing non-residential structures provided the size or intensity of use of the structures is not increased. For purposes of this section, "intensity of use" includes, but is not limited to, any increase in average daily trips, sewer usage, or water usage.
- (e) For issuance of a building permit to repair or modify an existing non-residential structure, provided such improvements do not expand the size or intensity of use of the structure.

The boundaries of the district are more particularly described by Plat No. \_\_\_\_\_ which is on file in the Office of the City Clerk. All persons desiring to testify with respect to: the necessity of the proposed public improvements, the cost of the proposed public improvements, the benefited area or the amount of the costs eligible to be recovered, may appear and be heard at this hearing.

(C) The City Engineer shall, at least twenty (20) days prior to the hearing, cause a copy of the Notice of Hearing to be mailed to each owner of real property within the benefited area as shown on the last equalized tax roll. The notice shall be accompanied by a map of the proposed cost reimbursement district area and a statement by the City Engineer describing:

- (i) The *public improvements* and that portion considered to be in excess of the developer's requirements which benefits other properties.
- (ii) The estimated or actual costs necessary to pay for the *public improvements*.
- (iii) The estimated or actual costs which are proposed to be assessed against the benefiting property when the property is developed.
- (iv) A plat, indicating the boundaries of the cost reimbursement district.

(3) Additional Deposits by Developer.

(A) No later than three weeks prior to the date of the hearing set in accordance with section 142.0680(e)(2), the developer shall deposit with the City any additional funds determined by the City Engineer necessary to cover the costs required for the formation and monitoring of the cost reimbursement district.

(B) If the City Council approves formation of the cost reimbursement district, the funds shall be used to cover the costs of annually monitoring the cost reimbursement district for its life.

(C) If funds become depleted below the amount deposited at formation, the City Engineer may require the developer to deposit additional funds, or may require an additional amount be withheld from any lien payments to replenish the fund to an appropriate level.

(g) Formation of a Cost Reimbursement District.

(1) Following the public hearing, the City Council, in its sole discretion, may:

(A) approve the formation of a cost reimbursement district,

(B) determine the area benefited by the improvements,

(C) authorize the City Manager to enter into a cost reimbursement agreement with the developer to provide for the disbursements of proceeds from the cost reimbursement district, and

(D) adopt a Resolution of Lien pursuant to Section 142.0680(g).

(2) The Resolution of Lien shall reference an exhibit containing the following:

- (A) A list of the properties, identified by assessor's parcel number and ownership of record, which are included within the cost reimbursement district boundaries.
  - (B) A plat, indicating the boundaries of the cost reimbursement district and identifying the properties assessed.
  - (C) An apportionment of the costs attributable to the improvements that benefit areas outside the development area, which represent the lien to be charged each parcel within the cost reimbursement district. If the costs are estimated, the Resolution of Lien shall indicate that the liens are subject to recomputation by the City Engineer when the construction of the *public improvements* and final audit have been completed.
  - (D) The actions causing the liens to become due and payable.
  - (E) Other matters as appropriate to the establishment and administration of the cost reimbursement district.
- (h) Lien on Property.
- (1) The Resolution of Lien constitutes a statement of charges, which may become due from the owners and their successors, heirs or assigns of the various parcels of property as their benefited share of the *public improvements*.
  - (2) Subsequent to the construction of the *public improvements*, the City Engineer shall re-spread the lien after final costs have been



calculated and verified by an audit, and shall cause the assessment roll to be appropriately modified. All affected property owners shall be notified in writing of their final lien amount.

- (3) If the scope of the project or nature of the work is altered during construction of the *public improvements*, City Council may increase the estimated cost.
- (4) The liens against each parcel within the cost reimbursement district shall be subject to an annual 6 percent simple interest payable at the time the lien is paid and as may be more specifically provided for in the reimbursement agreement with the developer.
- (5) The City Engineer shall record a copy of the Resolution of Lien with the County Recorder. Upon payment of the amounts due, or upon the expiration of the cost reimbursement district, the City Engineer shall cause to be filed a release of lien upon the affected property.
- (6) The maximum term of any liens on property shall not exceed twenty years from formation of the cost reimbursement district.
- (7) If, during the period following the formation of the cost reimbursement district, any person records a *final map* (subdivision, parcel, or consolidation map) or applies for a building permit for construction on a lot for which a lien for *public improvements* has been established in accordance with section 142.0680, and such person or predecessor in interest has not paid

the lien to the City, the established lien shall be paid prior to the earlier of the filing of the *final map* or the issuance of the building permit. Payment of the lien shall not be required in the following circumstances:

- (A) For issuance of a building permit for improvements to an existing residential *dwelling unit*.
- (B) For issuance of a building permit for the addition of *accessory structures* to an existing *dwelling unit* provided the *accessory structure* is not a companion unit.
- (C) For issuance of a building permit to replace an existing *dwelling unit* provided the density on the lot is not increased.
- (D) For issuance of a building permit to replace existing non-residential *structures* provided the size of the *structures* or intensity of use of the *premises* is not increased. For purposes of this section, intensity of use includes, but is not limited to, any increase in average daily trips for the *premises*; increase in the use of water, sewer drainage facilities or other public facilities; increase in the access to water, sewer drainage facilities or other public facilities.
- (E) For issuance of a building permit to repair or modify an existing non-residential *structure*, provided such

improvements do not expand the size or intensity of use of the *structure*.

(i) Collection and Disbursement of Funds.

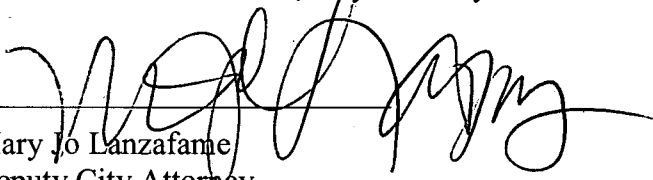
- (1) All funds collected in accordance with section 142.0680 shall be deposited into an appropriate fund established for the collection of funds and the monitoring of the established cost reimbursement district.
- (2) The City shall notify the developer constructing the *public improvements* pursuant to a reimbursement agreement of the existence of funds deposited. No funds may be reimbursed to the developer until all costs included in the cost reimbursement district have been verified or audited. The notification shall be mailed to the developer's address contained in the cost reimbursement agreement and no further inquiries or notification shall be required of the City.
- (3) If funds remains on deposit with the City without being claimed by the developer within three (3) years after notice has been made as provided in section 142.0680(h)2), the funds shall be forfeited to the City, and shall be transferred to the general fund of the City.

Section 2. 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 3. 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

  
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Mary Jo Lanzafame  
Deputy City Attorney

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