

COUNCIL POLICY

SUBJECT: SUBDIVISION IMPROVEMENTS--USE OF LIEN AGREEMENTS
POLICY NO.: 800-10
EFFECTIVE DATE: September 10, 1984

BACKGROUND:

The Subdivision Map Act authorizes local agencies to accept various forms of security to guarantee the satisfactory completion of public improvements and land development work by developers. This security is required when a developer wishes to obtain approval of a Final Subdivision Map prior to completion of the public improvements which are required by the local agency as a condition of approval of the map.

It has historically been the practice of the City of San Diego to require such security in the form of a Subdivision Improvement Bond. Because of the current depressed state of the construction industry, many developers are unable to obtain bonds at reasonable rates and are thereby precluded from recording a final map in spite of the substantial investment already made in the project. For this reason, the industry has requested that the City also accept Lien Agreements (also known as Deferred Improvement Agreements) as interim security for certain of the required public improvements, thereby, deferring the bonding requirement until the project is ready to proceed.

PURPOSE:

To establish a policy with regard to acceptance of Lien Agreements as security for subdivision improvements and to outline a procedure therefor.

POLICY:

It is the policy of the Council to authorize an interim improvement security in the form of a Lien Agreement when all of the following conditions are found to exist:

1. The developer agrees not to sell any of the individual lots within the subdivision during the period of the Lien Agreement.
2. The developer agrees to provide a bond or other security acceptable to the City to insure installation of the required improvements before the expiration of the lien period.
3. A determination is made that none of the improvements subject to the Lien Agreement are or will be needed by the City, or by an adjacent development approved by the City, within the term of the Lien Agreement.
4. A determination is made that the public interest does not require the installation of the improvements sooner than the expiration of the lien period agreed to in the Lien Agreement.
5. Subordination agreement from all prior lien holders agreeing to abide by City's Lien Agreement.

PROCEDURE:

- I. Any developer desiring City acceptance of a Lien Agreement as interim security for completion of subdivision improvements shall request in writing that a Lien Agreement be considered for the development. Such request must be submitted in sufficient time prior to consideration of Final Map approval to allow adequate evaluation and processing of the request. The developer shall also demonstrate to the satisfaction of the City Engineer that the improvements proposed to be deferred are not needed by either the City or by an adjacent development.
- II. Upon approval of the improvement plans and payment of the necessary fees and determination that the subdivision checking deposit contains a minimum balance of \$1,000, the City Engineer shall present the Lien Agreement to the Council for approval. The maximum lien period shall be for two years, shall commence upon approval of the agreement by Council, and the agreement shall be recorded by the County Recorder.
- III. Upon approval of the Lien Agreement, the Engineering Department will notify all interested departments that the subdivision is subject to a Lien Agreement and that no building permits, land development permits, or other developmental permits will be issued until the public improvements are bonded and a Notice to Proceed is issued. The Building Inspector will also be supplied a plat showing the Subdivision subject to the Lien Agreement.
- IV. Prior to the expiration of the lien period, the developer shall submit the necessary deposits and fees and shall obtain approval of written estimates for the public improvements and monuments. In addition, the developer shall submit an approved improvement security acceptable to the City. Upon receipt of the above, the City Engineer shall cause to be filed, for record, a written instrument properly extinguishing the lien and shall issue a Notice to Proceed.
- V. Until the provisions of Paragraph IV have been satisfied, no individual lots shall be sold, and no developmental permits shall be issued. In the event that the entire property is sold, the new owner must enter into a new agreement prior to issuance of the Notice to Proceed.
- VI. Under certain circumstances, the lien period may be extended by amendment to the Lien Agreement. Prior to any extension, the City Engineer shall review the subdivision requirements to determine if any additional improvements are necessary to satisfy conditions that may have changed during the lien period or if any improvements covered by the Lien Agreement must be bonded for and completed pursuant to separate agreement as a condition of extending the term of the Lien Agreement. Any additional improvements determined to be necessary shall be incorporated into the plans prior to granting any extension to the lien period.
- VII. Upon issuance of the Notice to Proceed, the City Engineer will advise all departments notified in Paragraph III that the prohibition against development is lifted and that permits may be issued upon proper application.

HISTORY:

Adopted by Resolution R-257315 10/11/1982

Amended by Resolution R-261493 09/10/1984