

Article 1: Public Improvement and Assessment Proceedings**Division 3: San Diego Improvement District Procedural Ordinance**

(“*San Diego Improvement District Procedural Ordinance*”
added 12-30-1965 by O-9340 N.S.)

A. General Provisions and Definitions**§61.0301 Citation of Division**

This Division may be cited as the San Diego Improvement District Procedural Ordinance.

(“*Citation of Division*” added 12-30-1965 by O-9350 N.S.)

§61.0302 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this Division, which does not directly affect the jurisdiction of the Council to order the work or improvement, shall avoid or invalidate such proceeding or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the Council in accordance with the provisions of this Division.

(“*Rules of Construction*” added 12-30-1965 by O-9340 N.S.)

§61.0303 Resumption of Hearings Not Regularly Adjourned

Whenever in any proceedings under this Division, a time and place for any hearing by the Council is fixed and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the Council in the premises shall not thereby be divested or lost, but the Council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the Council shall have power to act as in the first instance.

(“*Resumption of Hearings Not Regularly Adjourned*” added 12-30-1965 by O-9340 N.S.)

§61.0304 “Legislative Body”

“Legislative body” means the Council of The City of San Diego.
(“*Legislative Body*” added 12-30-1965 by O-9340 N.S.)

§61.0305 “Clerk” or “Clerk of the Legislative Body”

“Clerk” or “Clerk of the Legislative body” means the City Clerk of The City of San Diego.
(“*Clerk*” or “*Clerk of the Legislative Body*” added 12-30-1965 by O-9340 N.S.)

§61.0306 “Improvement”

“Improvement” includes all work and improvements which are for a public purpose or which are necessary or incidental to a public purpose, including but not limited to the construction, reconstruction and repair of all or part of any such work or improvement.

(“*Improvement*” added 12-30-1965 by O-9340 N.S.)

§61.0307 “Install”

“Install” includes construct, reconstruct, extend, repair and maintain.
(“*Install*” added 12-30-1965 by O-9340 N.S.)

§61.0308 “Owner”

“Owner” means the person owning the fee, or the person in whose name the legal title to the property appears, by deed duly recorded in the County Recorder’s office of the county in which the property is situated, or the person in possession of the property or buildings under claim of, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner. If the property is leased, the possession of the tenant or lessee holding and occupying such property shall be deemed to be the possession of the owner.
(“*Owner*” added 12-30-1965 by O-9340 N.S.)

§61.0309 “Acquisition”

“Acquisition”, or any of its variants, means and includes one or more of the following:

- (a) Any works, improvements, appliances or facilities authorized to be made, constructed or acquired under this Division and which are in existence and installed in place on or before the date of adoption of the resolution of intention for the acquisition thereof, any use or capacity rights in any of the foregoing;
 - (b) Electric current, gas or other illuminating agent for power or lighting service;
 - (c) Any real property, rights-of-way, easements or interests in real property, acquired or to be acquired by gift, purchase or eminent domain, and which are necessary or convenient in connection with the construction or operation of any work or improvement authorized to be acquired or to be made or constructed under this Division, excepting therefrom any such real property, rights-of-way, easements or interests in real property shown upon any final map filed with or submitted to the Council for acceptance and approval under the provisions of the Subdivision Map Act (commencing at Section 11500, Business and Professions Code) and offered for dedication to public use by said map or by any separate offer of dedication theretofore or thereafter made.
- (“Acquisition” added 12-30-1965 by O-9340 N.S.)*

§61.0310 “Participating Agency”

“Participating Agency” means any local, state or national agency or authority including but not limited to The City of San Diego and the U.S. Corps of Engineers.
(Amended 12-8-1980 by O-15400 N.S.)

§61.0311 Non-Exclusiveness of Division

This Division is not exclusive. The Council shall have the power to provide other procedures or to follow procedures and powers now or hereafter provided by general law. The procedures and powers herein are alternative. When proceeding under this Division, its provisions only need be followed.

(“Non-Exclusiveness of Division” added 12-30-1965 by O-9340 N.S.)

§61.0312 Incorporation Effect

When provisions of general law or acts are incorporated in this Division, such incorporation shall be interpreted to mean the wording of the general law or acts then in effect at the date the Council adopts its resolution of intention to participate in a project, unless the Council shall provide otherwise.

(“Incorporation Effect” added 12-30-1965 by O-9340 N.S.)

§61.0313 Necessary or Convenient Procedure Authorized

Any procedure not expressly set forth in this Division but deemed necessary or convenient to carry out any of its purposes is authorized.

(“*Necessary or Convenient Procedure Authorized*” added 12-30-1965 by O-9340 N.S.)

§61.0314 Severability Clause

If any section or part of this ordinance be for any reason held unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of this ordinance, but such remaining portions shall be and remain in full force and effect.

(“*Severability Clause*” added 12-30-1965 by O-9340 N.S.)

B. Resolution of Intention and Report**§61.0315 Resolution of Intention**

Whenever the public interest or convenience requires, the Council may declare that the City shall participate in the financing of the construction, installation, acquisition, repair or replacement of any improvement when such work has been accepted as a project by a participating agency, and applicable law or rules, regulations or orders require the participating agency to be in control of the project. The Council may adopt a resolution declaring the City’s intention to participate in the financing of such a project. The resolution of intention shall include the following information:

- (a) A statement that the work is to be performed under the auspices and control of a designated participating agency;
- (b) A statement setting forth the proposal for sharing of the costs of the project including the share, if any, to be borne by the benefited property;
- (c) A brief description of the proposed improvements;
- (d) A brief description of the exterior boundaries of the proposed assessment district;
- (e) Provisions for the issuance of bonds to represent any unpaid assessments;

- (f) A statement that payments made upon the assessments and the proceeds of any bonds issued shall be paid, at least in part, to the participating agency;
 - (g) Provisions for the disposal of any surplus remaining in the improvement fund after the completion of the improvement.
- (“Resolution of Intention” added 12-30-1965 by O-9340 N.S.)*

§61.0316 Same: Call for Report

In the resolution of intention the Council shall refer the proposed improvement to the City Engineer to make and file with the City Clerk a report in writing.

(“Same: Call for Report” added 12-30-1965 by O-9340 N.S.)

§61.0317 Same: Requisites of Report

The Engineer’s report shall contain:

- (a) A brief description of the acquisition or improvement proposed to be financed, which description may refer to any plans and specifications of the participating agency.
- (b) An estimate of the total cost of the acquisition and improvement and estimates of the amounts which would be borne by the participating agency, the City (if any), and to be assessed against the benefited lands within the assessment district.
- (c) A diagram showing the assessment district and the boundaries and dimensions of the parcels or subdivisions of land within the district as they existed at the time of the passage of the resolution of intention. Each parcel or subdivision shall be given a separate number upon the diagram.
- (d) A proposed assessment of the total amount of the cost and expenses to be assessed upon the several parcels or subdivisions of land in the district in proportion to the estimated benefits to be received by such parcels or subdivisions respectively, from the improvement. When any portion or percentage of the cost and expenses of the improvement is ordered to be paid out of the treasury of The City of San Diego or is to be provided in either cash or services by the participating agency, the amount of such portions or percentages shall first be deducted from the total estimated cost and expenses of the improvement, and the assessment upon property proposed in the report shall include only the remainder of the estimated cost and expenses. The

assessment shall refer to the parcels or subdivisions by their respective numbers as assigned pursuant to subdivision (c) of this section.

(*"Same: Requisites of Report"* added 12-30-1965 by O-9340 N.S.)

§61.0318 Authority for City to Contribute to Cost

At any time or times prior to confirmation of the assessment, the Council may provide for a contribution or contributions by the City of part of the cost and expenses of the proposed work, and it shall not be necessary to set forth or give notice of such contribution in the resolution of intention or in any other proceedings under this Division.

(*"Authority for City to Contribute to Cost"* added 12-30-1965 by O-9340 N.S.)

§61.0319 Appropriation of Contribution by Installments

The Council may, in its discretion, provide that any contribution being made pursuant to Section 61.0318 may, to the extent of the fund so designated, be appropriated in such installments as the Council may determine, provided that the total amount of such installments shall have been appropriated at or prior to the completion of the work.

(*"Appropriation of Contribution by Installments"* added 12-30-1965 by O-9340 N.S.)

C. Creating Assessment District

§61.0320 Authority to Create Assessment District: Territory Includable

The Council shall make all or a designated portion of the cost and expenses of the acquisition and improvement chargeable upon a district, which the Council shall, in its resolution of intention, declare to be the district benefited by the acquisition and improvement, and to be assessed to pay so much of the cost and expense thereof as the Council shall determine. The territory comprising said district may, but need not, include all, or be confined to, or extended beyond, the lots and lands fronting upon the improvement, or be contiguous, and the district may consist of separate and distinct areas or sections. The work performed in one section need not benefit the other section or sections.

(*"Authority to Create Assessment District: Territory Includable"* added 12-30-1965 by O-9340 N.S.)

§61.0321 Manner of Description of District

The district may be described by:

- (a) Stating its exterior boundaries;
- (b) Giving a description thereof according to any official or recorded map; or
- (c) Referring to a plat or map on file in the office of the City Clerk or City Engineer at the time of passing the resolution of intention, which shall indicate by a boundary line the extent of the territory included in the proposed district, and shall govern for all details as to the extent of the assessment district.

(“Manner of Description of District” added 12-30-1965 by O-9340 N.S.)

§61.0322 Proceedings in Which Description Not Required

The assessment district need not be described in any of the notices, resolutions, orders or determinations provided for in this Division, other than the resolution of intention. Any description of said district in any of the same shall be sufficient, if it refers to the resolution of intention for a description of the district.

(“Proceedings in Which Description Not Required” added 12-30-1965 by O-9340 N.S.)

D. Notice, Protest and Hearing**§61.0323 Consideration of Report: Modification**

When the report provided for in Sections 61.0316 and 61.0317, is filed with the City Clerk, he shall present it to the Council for consideration. The Council may modify it in any respect. The report as modified shall stand as the report for the purpose of all subsequent proceedings except that it may be confirmed, modified, or corrected as provided in this Division.

(“Consideration of Report: Modification” added 12-30-1965 by O-9340 N.S.)

§61.0324 Same: Hearing

After passing on the report, the Council by resolution shall appoint a time and place for hearing protests to the proposed improvement and shall direct the City Clerk to give notice of the hearing as provided in this Division, and shall designate a daily or

weekly newspaper published and circulated in the City in which the notice shall be published. The hearing shall be held not less than 30 days after the passage of the resolution.

(“*Same: Hearing*” added 12-30-1965 by O-9340 N.S.)

§61.0325 Notice of Improvement: Posting

After the passage of the resolution of intention, the filing of the report, and the setting of the time and place for hearing protests, the City Clerk shall cause notices of the passage of the resolution to be posted. The notices shall be posted conspicuously on all the open streets within the district, at not more than 300 feet apart on each street so posted, but not less than three in all.

(“*Notice of Improvement: Posting*” added 12-30-1965 by O-9340 N.S.)

§61.0326 Same: Contents

The notices shall:

- (a) Be headed “notice of improvement,” in letters of not less than one inch (1”) in height.
- (b) In legible characters state the fact and date of passage of the resolution of intention, the filing of the report and the time and place set for hearing of protests.
- (c) Briefly describe the acquisition and improvement proposed to be financed.
- (d) Refer to the resolution of intention and report for further particulars.

(“*Same: Contents*” added 12-30-1965 by O-9340 N.S.)

§61.0327 Same: Publication

The City Clerk shall also cause a notice similar in substance to the notice described in Section 61.0326 to be published pursuant to Section 6066 of the Government Code. The notices shall be posted and first published at least 20 days before the date set for hearing of protests.

(“*Same: Publication*” added 12-30-1965 by O-9340 N.S.)

§61.0328 Same: Substantial Compliance Sufficient

No proceeding shall be held invalid for failure to post any street or streets if Sections 61.0325, 61.0326 and 61.0327 have been substantially complied with.

(“*Same: Substantial Compliance Sufficient*” added 12-30-1965 by O-9340 N.S.)

§61.0329 Same: Notice to Property Owners

At least 20 days before the date set for hearing of protests, the City Clerk shall mail, postage prepaid, notices of the adoption of the resolution of intention and the filing of the report to all persons owning real property proposed to be assessed whose names and addresses appear on the last equalized assessment roll for city taxes or who are known to the City Clerk. The failure of the City Clerk to mail the notice to any property owner or the failure of any property owner to receive the notice shall not affect the validity of any proceedings taken under this Division. If property assessed by the State under Section 14 of Article XIII of the Constitution is proposed to be assessed, such notice shall be mailed to every owner of such property at the address thereof shown on the last board roll transmitted to the county auditor.

(“*Same: Notice to Property Owners*” added 12-30-1965 by O-9340 N.S.)

§61.0330 Same: Contents of Notice to Property Owners

The notice shall contain:

- (a) A statement of the time, place, and purpose of the hearing on the resolution of intention and report.
- (b) A statement of the total estimated cost of the proposed acquisition and improvement.
- (c) The amount, as shown by the report, to be assessed against the particular parcel covered by the notice.
- (d) A statement that any person interested may file a protest in writing as provided in this Division.

(“*Same: Contents of Notice to Property Owners*” added 12-30-1965 by O-9340 N.S.)

§61.0331 Same: Affidavit of Clerk

Upon the completion of the mailing of the notices, the City Clerk shall file with the Council an affidavit setting forth the time and manner of the compliance with the requirements of this Division for publishing, posting, and mailing notices.

(“*Same: Affidavit of Clerk*” added 12-30-1965 by O-9340 N.S.)

§61.0332 Protests

Any interested person may object to the proposed improvement, the extent of the assessment district, or to the proposed assessment by filing a written protest with the City Clerk at or before the time set for the hearing. Such protest must contain a description of the property in which each signer thereof is interested sufficient to identify the same, and, if the signers are not shown on the last equalized assessment roll as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property. The City Clerk shall endorse on each protest the date of its receipt, and at the time appointed for the hearing shall present to the Council all protests filed with him.

Any document filed as a “protest” before the Council orders the publication of the resolution of intention shall not be considered a protest in compliance with this Division.

(“*Protests*” added 12-30-1965 by O-9340 N.S.)

§61.0333 Same: When Further Proceedings Barred

If the protests are against the proposed improvement and the Council finds that such protests are signed by the owners of more than one-half of the area of the land included within the assessment district, all further proceedings under the resolution of intention are barred, and no new resolution of intention for the same improvement shall be passed within six months after decision of the Council on the hearing, unless the protests are overruled by an affirmative vote of four-fifths of the members of the Council. The Council may confirm, modify, or correct the proposed assessment.

(“*Same: When Further Proceedings Barred*” added 12-30-1965 by O-9340 N.S.)

§61.0334 Same: Majority Protest

If it shall be necessary, in order to find whether a majority protest exists, to determine whether any or all of the signers of written protests are the “owners” of property to be assessed, the Council shall make such determination from the last equalized assessment roll, any written evidence submitted with a written protest and any other

evidence received at the hearing. The Council shall be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership shall be final and conclusive.

(*"Same: Majority Protest"* added 12-30-1965 by O-9340 N.S.)

§61.0335 Right of Mortgagee or Beneficiary to Protest on Certain Acquisitions

If the proposed improvement includes the acquisition of any improvements constructed pursuant to the provisions of the Subdivision Map Act (commencing at Section 11500, California Business and Professions Code) and such improvements were financed, in whole or in part, from the proceeds of any loan secured by a mortgage or deed of trust upon any lands within the proposed assessment district, upon submission of evidence satisfactory to the Council, of the foregoing, the mortgagee or beneficiary under any such mortgage or deed of trust may protest in the same manner and to the same extent as the owner of such lands.

(*"Right of Mortgagee or Beneficiary to Protest on Certain Acquisitions"* added 12-30-1965 by O-9340 N.S.)

§61.0336 Protests: Confirmation of Assessment

When upon the hearing the proposed assessment is confirmed as filed, as modified, or corrected, by resolution the Council shall approve the making of the proposed acquisition and improvement by the participating agency, declare that the funds collected from the assessments or sale of bonds be tendered the participating agency, and declare its action upon the report and assessment. The resolution shall be final as to all persons, and the assessment thereby levied upon the respective parcels or subdivisions of land in the assessment district.

(*"Protests: Confirmation of Assessment"* added 12-30-1965 by O-9340 N.S.)

**E. Change of Work, Boundaries of Assessment District,
Amounts of Assessments or Proceedings****§61.0337 Change of Work, Boundaries of Assessment District Amounts of Assessments or Proceedings**

The manner in which changes of work, boundaries, assessments or the like shall be as provided in Division 12, Chapter 4.5 of the California Streets and Highways Code (Municipal Improvement Act of 1913, Sections 10351 through 10358). Said

provisions are hereby adopted and referred to and made part of this Division with the same force and effect as though specifically set forth herein.

(*"Change of Work, Boundaries of Assessment District Amounts of Assessments or Proceedings"* added 12-30-1965 by O-9340 N.S.)

F. Levying and Collecting the Assessment

§61.0338 Levying and Collecting the Assessment

The manner in which the assessment shall be levied and collected shall be as provided in Division 12, Chapter 5 of the California Streets and Highways Code (Municipal Improvement Act of 1913, Sections 10400 through 10430). Said provisions are hereby adopted and referred to and made part of this Division with the same force and effect as though specifically set forth herein.

(*"Levying and Collecting the Assessment"* added 12-30-1965 by O-9340 N.S.)

G. Improvement Bonds

§61.0339 Improvement Bonds

Improvement bonds may be issued as provided in Division 7, Part 5, of the California Streets and Highways Code (Improvement Act of 1911) Commencing with Section 6400 thereof, or as provided in Division 10 of said Code (Improvement Bond Act of 1915) commencing with Section 8500. Said provisions are hereby adopted and referred to and made part of this division with the same force and effect as if specifically set forth herein.

(Amended 2-11-1980 by O-15186 N.S.)

H. Urgency Proceedings

§61.0340 Urgency Proceedings

In the event a participating agency proposes to proceed with an improvement, the acquisition, construction, repair or installation of which is required to be commenced in advance of the completion of assessment proceedings under this Division, the City Council may declare that an urgent need exists for the acquisition and improvement

and by resolution may direct the participation by the City in the project to include the advancement of funds to the participating agency. Thereafter, the City shall cause assessment proceedings to be continued.

At the completion of such proceedings, the assessments collected, either in cash or through the sale of bonds, may be paid directly to the City in reimbursement of funds advanced by the City to the participating agency.

(“*Urgency Proceedings*” added 12-30-1965 by O-9340 N.S.)