

Article 1: Public Improvement and Assessment Proceedings

**Division 21: Advancement and Deferral for
Limited-Income Property Owners of
Preparation Costs for Undergrounding of Utilities**
*(“Advancement and Deferral for
Limited-Income Property Owners of
Preparation Costs for Undergrounding of Utilities”
added 3-13-1978 by O-12314 N.S.)*

§61.2100 Purpose and Intent

The purpose and intent of this Division is to provide qualified limited-income property owners with a method for fulfilling their obligation under Section 61.0513 of this Article, to provide all necessary work for continuance of utility service when such services are placed underground. The Council finds and declares that California Public Utilities Commission orders and City ordinance requiring property owners to provide all work and facilities necessary to receive underground service pursuant to the conversion and relocation procedures of the San Diego Underground Utilities Procedural Ordinance and state law often results in financial hardship to limited-income property owners.

Because of this finding and declaration, the City Council, in the exercise of the Council's charter power to make suitable provision for the aid and support of the poor, determines and declares that it is in the public interest for the City to provide a method for advancement and deferral of payment of these costs for qualified limited-income owners until such time as the property served is transferred or refinanced. The Council further finds and declares that all expenditures and investments made pursuant to this Division are incidental to the accomplishment of the primary purpose of making suitable provision for the aid and support of the poor.

(“Purpose and Intent” added 3-13-1978 by O-12314 N.S.)

§61.2101 Inconsistencies with State Law

This Division is adopted pursuant to the City's charter powers to make and enforce all ordinances and regulations in respect to municipal affairs. To the extent of any inconsistencies between the provisions of this Division and those of Public Utilities Commission orders or other state laws, the provisions of this Division shall control.
(“Inconsistencies with State Law” added 3-13-1978 by O-12314 N.S.)

§61.2102 Scope of Preparation Cost Deferral

This Division is limited to qualified limited-income owners residing within the City of San Diego and to proceedings provided for by the San Diego Underground Utilities Procedural Ordinance. There are no age restrictions for qualified limited-income owners.

(“Scope of Preparation Cost Deferral” added 3-13-1978 by O-12314 N.S.)

§61.2103 Definitions

The meaning of the various terms in this Division shall be as follows:

- (a) PREPARATION COSTS shall mean those costs incurred or to be incurred pursuant to San Diego Municipal Code Section 61.0515.
- (b) UNDERGROUND OR UNDERGROUNDING shall mean the placement, construction and maintenance of underground utility services as provided for in Chapter VI, Article I, Division 5, San Diego Municipal Code and under commission order or ruling.
- (c) COMMISSION shall mean the Public Utilities Commission of the State of California.
- (d) CITY shall mean The City of San Diego.
- (e) COUNCIL shall mean the City Council of the City.
- (f) CITY MANAGER shall mean the City Manager and any officer, department, or division of the City designated by him for the administration of this Division.
- (g) APPLICANT shall mean the person or persons filing for preparation cost deferral or whose application has been finally approved by the Department.
- (h) LIEN AGREEMENT has the meaning set forth in Section 61.2108.
- (i) INCOME shall mean all income of any nature from any source derived, including, but not limited to, salaries, wages, dividends, interest, capital gains, rents, income from the operation of a farm or business, income from the sale

or exchange of property, gifts, inheritances, Social Security payments, other retirement benefits, welfare benefits, alimony and support payments and any other things of economic value.

- (j) LIMITED-INCOME OWNER shall mean an owner (1) whose income is within the guidelines for low-income citizens and families set by the United States Department of Housing and Urban Development, Economic Marketing Analysis Division, as adjusted annually for the San Diego Metropolitan Statistical Area and (2) whose net assets do not exceed \$10,000.
- (k) NET ASSETS shall mean all real and personal property of any character which a limited-income owner owns or has an interest in, including stocks, bonds, and savings accounts but excluding the real property subject to preparation cost deferral.
- (l) OWNER shall mean the person or persons owning and occupying real property in the City of San Diego which is included in an Underground Utility District of the City and successors in interest or the legally appointed representatives of such person or persons.
- (m) REFINANCING shall mean any new indebtedness incurred by an owner after delivery to the City of a lien agreement pursuant to this Division and any extension, modification, or additional advances made upon any indebtedness previously incurred by an owner, where such indebtednesses are secured by a mortgage on all or any part of the real property in which the City has a security interest.
- (n) SECURITY or SECURITY INTEREST has the meaning set forth in Section 61.2108.
- (o) TRANSFER, when referring to real property, shall mean any sale, exchange, gift, or lease of real property or any interest therein, whether made by the original owner, any successor in interest or legally appointed representative of the owner or made pursuant to the laws of inheritance and succession.
- (p) UNDERGROUND UTILITY DISTRICT has that meaning as provided in the Underground Utilities Procedural Ordinance.

(Amended 1-14-2002 by O-19032 N.S.)

§61.2104 Rules and Regulations of City Manager

The City Manager shall establish rules and regulations for the administration of this Division. Among other things, the rules and regulations may specify the exceptions to the requirement that an applicant be a resident of the real property for which the preparation cost deferral is sought and may set forth the form or contents of applications, information statements, lien agreements, notes, and any other documents necessary or convenient for the administration of this Division; provided, however, that any exception to the requirement that the limited-income owner be an occupant of the real property for which the assessment deferral is sought shall be granted only upon the express consideration and approval of the City Council.
(“Rules and Regulations of City Manager” added 3-13-1978 by O-12314 N.S.)

§61.2105 Qualification of Limited-Income Owners

A qualified limited-income owner must meet the following eligibility requirements:

- (a) Owner’s income must be within the guidelines for limited-income citizens and families set by the United States Department of Housing and Urban Development, Economic Marketing Analysis Division, as adjusted annually for the San Diego Metropolitan Statistical Area.
- (b) The value of owner’s net assets cannot exceed \$10,000.
- (c) The real property for which preparation cost deferral is sought must be owner-occupied unless otherwise excepted and approved by the City Council.
(“Qualification of Limited-Income Owners” added 3-13-1978 by O-12314 N.S.)

§61.2106 Written Explanation of Preparation Cost Deferral Program

The City Manager shall prepare a written explanation of the preparation cost deferral program in the form of a pamphlet or booklet and shall furnish sufficient copies thereof to the City Clerk for the purpose of mailing.

(“Written Explanation of Preparation Cost Deferral Program” added 3-13-1978 by O-12314 N.S.)

§61.2106.1 Same-Pending Underground Utilities Procedural Ordinance Proceedings

In pending proceedings under the Underground Utilities Procedural Ordinance, the City Clerk shall mail a written explanation of the preparation cost deferral program to all owners within the proposed Underground Utility district. Unless otherwise

instructed by the City Manager, the City Clerk shall enclose the explanation with the mailed notice required by Section 61.0513. In anticipation of adoption of a resolution designating an Underground Utility district, the City Manager may instruct the City Clerk to separately mail the explanation in advance of the mailed notice.
(Amended 1-14-2002 by O-19032 N.S.)

§61.2106.2 Same—Failure to Give or Receive Explanation

The failure of the City Manager or the City Clerk to distribute or mail written explanations of the preparation cost deferral program or the failure of any owner to receive the explanation shall not affect the validity of any proposed, pending, or completed underground utility ordinance proceedings.

(“Same—Failure to Give or Receive Explanation” added 3-13-1978 by O-12314 N.S.)

§61.2107 Request and Application for Preparation Cost Deferral

Each owner interested in obtaining a preparation cost advancement and deferral shall file a request for an application with the City Manager. Among other things, the request shall contain:

- (a) Signer’s name and mailing address.
- (b) A description sufficient to identify the real property for which preparation cost deferral is sought.
- (c) A statement that the real property is located in the City of San Diego, is owned by the signer, and is or is not occupied by the signer.
- (d) A statement that signer believes he or she is eligible as a qualified limited-income owner and agrees to furnish the City Manager with detailed information concerning signer’s eligibility, income, and net assets.
- (e) A request for an application for deferral of amounts due to an eligible contractor for property preparation prior to installation of underground service.
- (f) A statement that the preparation work is to be performed by a qualified licensed contractor including the name, business address and license number of said contractor.

(g) Signature of applicant.

If upon examination of a filed request it appears that the signer may be a qualified limited-income owner, the City Manager shall furnish the signer of the request with an application for preparation cost deferral. Among other things, the application shall contain information concerning the applicant's eligibility, income, and net assets in such detail as may be necessary for the City Manager to determine applicant's eligibility as a qualified limited-income owner. The applicant shall complete the application, sign it under penalty of perjury, and file it with the City Manager.

(*"Request and Application for Preparation Cost Deferral"* added 3-13-1978 by O-12314 N.S.)

§61.2107.1 Same — Approval or Denial of Application

The City Manager shall promptly investigate and review all filed applications for preparation cost deferrals. The City Manager may require applicant to furnish such additional information as may be necessary to determine whether applicant is a qualified limited-income owner. Upon completion of the investigation and review, the City Manager shall either deny or give preliminary approval to the application. Final approval of the application shall be given by the City Manager only upon applicant's furnishing the City with the security required by Section 61.2108.

(*"Same — Approval or Denial of Application"* added 3-13-1978 by O-12314 N.S.)

§61.2107.2 Same

The City Manager shall not approve any application for preparation cost deferral unless the preparation work is done by a qualified licensed contractor. For the purposes of this Division "qualified licensed contractor" shall mean any person approved by the City Engineer prior to the commencement of work.

(*"Same"* added 3-13-1978 by O-12314 N.S.)

§61.2107.3 Same

City Engineer shall establish and make available copies of standards for determination of "qualified licensed contractor."

(*"Same"* added 3-13-1978 by O-12314 N.S.)

§61.2108 Security for Preparation Cost Deferral

Before giving final approval to any application for preparation cost deferral, the City Manager shall obtain security for all amounts paid by the City pursuant to this

Division. Said security shall consist of an agreement between the limited-income property owner and the City that the City shall have a lien upon the property of the owner for all amounts advanced under this Division. Said lien agreement shall have provisions regarding repayment of amounts advanced by the City as either:

- (a) specific times or
- (b) in accordance with the provisions of Section 61.2111.
(“Security for Preparation Cost Deferral” added 3-13-1978 by O-12314 N.S.)

§61.2110 Cash Payment of Preparation Costs

The City Manager, for and on behalf of the City, may pay all preparation costs necessary to receive installation of underground utility services upon any applicant's real property. Expenditures made for the purpose of paying preparation costs shall be paid from the appropriate Federal Revenue Sharing Funds available to the City pursuant to Federal law.

(“Cash Payment of Preparation Costs” added 3-13-1978 by O-12314 N.S.)

§61.2111 Repayment of Amounts Advanced

When an owner has been advanced preparation costs and a lien agreement has been executed, said amount shall come due and be paid:

- (a) upon transfer of the property;
- (b) upon determination that the owner no longer qualifies for deferral;
- (c) upon refinancing of the property.

A property owner may remove the lien at any time by payment of the amount advanced to the City Manager. All payments received by the City Manager shall be deposited in the General Fund.

The City Manager shall deliver to the owner a receipted statement showing the full amount of the advancement, the amount of payment made, and the balance, if any, remaining unpaid on the date of payment.

Upon full payment, the City Manager shall cancel the note and discharge the lien.
(“Repayment of Amounts Advanced” added 3-13-1978 by O-12314 N.S.)

§61.2112 Interest

The note shall be in a principal amount equal to the preparation cost paid by the City for the limited-income owner.

The principal amount of the note shall bear simple annual interest at a rate equal to the average annual interest rate earned by the City on its long-term investments.

The entire unpaid principal amount of the note, together with all interest due thereon, shall become immediately due and payable to the City upon and before any transfer or refinancing affecting the real property described in the lien agreement.

(“*Interest*” added 3-13-1978 by O-12314 N.S.)

§61.2113 Supervision of Preparation Cost Deferrals by City Manager

The City Manager shall provide continuing supervision of all finally approved applications for preparation cost deferral, all lien agreements furnished to the City pursuant to such applications, the payment to the City of all amounts due thereunder, the financial transactions of owners affecting the lien agreements, and owner’s continuing eligibility as a qualified limited-income owner.

(“*Supervision of Preparation Cost Deferrals by City Manager*” added 3-13-1978 by O-12314 N.S.)

§61.2113.1 Same — Recordation of Liens

Upon final approval of any application and execution of the lien agreement, the City Manager shall immediately record the lien with the County Recorder of San Diego County.

(“*Supervision of Preparation Cost Deferrals by City Manager*” added 3-13-1978 by O-12314 N.S.)

§61.2113.2 Same — Records

The City Manager shall keep and maintain records showing all finally approved applications for preparation cost deferral, all lien agreements, all payments made and all defaults.

The City Manager shall establish and maintain a system for supervision of all payments due the City.

Insofar as practicable, the system shall disclose all proposed, pending, or completed transfers or refinancing of any real property in which the City has a security interest. (*"Same — Records"* added 3-13-1978 by O-12314 N.S.)

§61.2113.3 Same — Annual Review of Status of Securities Applicants

Not less than once a year, the City Manager shall review all finally approved applications, the security furnished the City pursuant thereto, and the financial transactions and condition of applicant. For that purpose, the City Manager may require the applicant, either orally or in writing, to furnish information given under penalty of perjury concerning:

- (a) Any proposed, pending, or completed transfers or refinancing affecting the real property in which the City has a security interest.
- (b) Applicant's continuing eligibility as a qualified limited-income owner.

The failure or refusal of applicant to furnish such information shall be deemed an event of default, upon the occurrence of which the City may enforce its security interest.

(*"Same — Annual Review of Status of Securities Applicants"* added 3-13-1978 by O-12314 N.S.)

§61.2113.4 Same — Default by Owners

If an applicant ceases to be a qualified limited-income owner or fails or refuses to make payments to the City when due, or if, in the opinion of the City Manager, it appears probable that such payments will not be made when due, the City Manager shall report such matters to the Council, together with his recommendations.

Thereupon the Council may instruct the City Manager to make further efforts to collect amounts due, authorize the City Manager to compromise or write off all or any part of the amounts due, or order the City Manager to refer the matters to the City Attorney for enforcement of the City's security.

(*"Same — Default by Owners"* added 3-13-1978 by O-12314 N.S.)

§61.2113.5 Enforcement of Security by City Attorney

Upon receipt from the City Manager of notice of actual or probable default upon a lien agreement executed for the City, the City Attorney shall undertake such legal action as may be necessary to protect the interests of the City.

If, in the opinion of the City Attorney, all or part of the amounts due the City are uncollectible or the estimated costs and expenses of collection would exceed the amount of the probable recovery, the City Attorney shall so report to the Council, together with his recommendations. Thereupon, the Council may instruct the City Attorney to further prosecute enforcement of the security or authorize the City Attorney to compromise or write off all or any part of the amounts due.

(“*Enforcement of Security by City Attorney*” added 3-13-1978 by O-12314 N.S.)