

Article 1: Public Improvement and Assessment Proceedings**Division 23: San Diego Improvement District Procedural Ordinance****Part 1****General Provisions and Definitions**

(*Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.*)

§61.2300 Citation of Division

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

(Amended 4-12-1999 by O-18633 N.S.)

§61.2301 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 2-22-1982 by O-15668 N.S.)

§61.2302 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 2-22-1982 by O-15668 N.S.)

§61.2303 Legislative Body

“Legislative body” means the Council of The City of San Diego.
(“*Legislative Body*” added 2–22–1982 by O–15668 N.S.)

§61.2304 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 2–22–1982 by O–15668 N.S.)

§61.2305 Improvement

“Improvement” includes all work, improvements, appliances or facilities 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 2–22–1982 by O–15668 N.S.)

§61.2306 Install

“Install” includes construct, reconstruct, extend, repair and maintain.
(“*Install*” added 2–22–1982 by O–15668 N.S.)

§61.2307 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 2–22–1982 by O–15668 N.S.)

§61.2308 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 whether or not such works, improvements, appliances or facilities are in existence and installed in place on or before the date of adoption of the resolution of intention for the acquisition thereof.
- (b) Any use or capacity rights in any of the foregoing.
- (c) Electric current, gas or other illuminating agent for power or lighting service.
- (d) 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.

(“*Acquisition*” added 2-22-1982 by O-15668 N.S.)

§61.2309 Report

“Report” means the report prepared by the City Engineer pursuant to Sections 61.2324 and 61.2325.

(“*Report*” added 2-22-1982 by O-15668 N.S.)

§61.2310 Special Assessment District Delinquency Fund

Special Assessment District Delinquency Fund shall mean the special fund established under Part 9 of this Division in which the penalties and interest imposed upon delinquent payments of amounts assessed pursuant to the provisions of the Improvement Bond Act of 1915, the provisions of the Mello-Roos Community Facilities District Act and the provisions of the Lighting and Landscape Improvement Act of 1972, are deposited.

(“*Special Assessment District Delinquency Fund*” added 12-8-1992 by O-17882 N.S.)

§61.2311 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*” renumbered from Sec. 61.2310 on 12–8–1992 by O–17882 N.S.)

§61.2312 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*” renumbered from Sec. 61.2311 on 12–8–1992 by O–17882 N.S.)

§61.2313 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*” renumbered from Sec. 61.2312 on 12–8–1992 by O–17882 N.S.)

§61.2314 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.

(Renumbered from Sec. 61.2313 on 12–8–1992 by O–17882 N.S.)

Part 2**Creating District, Resolution of Intention, Report, and City Contribution***(Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.)***§61.2320 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 land 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 2-22-1982 by O-15668 N.S.)

§61.2321 Resolution of Intention

Whenever the public interest or convenience requires, the Council may declare that the City shall finance the construction, installation, acquisition, repair or replacement of any improvement by the adoption of a resolution declaring the City’s intention to finance such improvement under the provisions of this ordinance. The resolution of intention shall include the following information:

- (a) A brief description of the proposed improvements.
- (b) A brief description of the exterior boundaries of the proposed assessment district.
- (c) Provisions for the issuance of bonds to represent any unpaid assessments.
- (d) Provisions for the disposal of any surplus remaining in the improvement fund after the completion of the improvement.

(“Resolution of Intention” added 2-22-1982 by O-15668 N.S.)

§61.2322 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 2-22-1982 by O-15668 N.S.)

§61.2323 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 2-22-1982 by O-15668 N.S.)

§61.2324 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 2-22-1982 by O-15668 N.S.)

§61.2325 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.
- (b) An estimate of the total cost of the acquisition and improvement and estimates of the amounts which would be borne by 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, 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 the 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 2-22-1982 by O-15668 N.S.)

§61.2326

Consideration of Report: Modification

When the report provided for in Sections 61.2324 and 61.2325 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 2-22-1982 by O-15668 N.S.)

§61.2327

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 2-22-1982 by O-15668 N.S.)

§61.2328 Appropriation of Contribution by Installments

The Council may, in its discretion, provide that any contribution being made pursuant to Section 61.2327 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 2-22-1982 by O-15668 N.S.)

**Part 3
Hearing and Notice**

(Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.)

§61.2330 Time of 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 twenty (20) days after the passage of the resolution.

(*"Time of Hearing"* added 2-22-1982 by O-15668 N.S.)

§61.2331 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 2-22-1982 by O-15668 N.S.)

§61.2332 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 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 2-22-1982 by O-15668 N.S.)

§61.2333 Same: Publication

The City Clerk shall also cause a notice similar in substance to the notice described in Section 61.2343 to be published pursuant to Section 6066 of the Government Code. The notices shall be posted and first published at least twenty (20) days before the date set for hearing of protests.

(“Same: Publication” added 2-22-1982 by O-15668 N.S.)

§61.2334 Same: Substantial Compliance Sufficient

No proceeding shall be held invalid for failure to post any street or streets if Sections 61.2342, 61.2343 and 61.2344 have been substantially complied with.

(“Same: Substantial Compliance Sufficient” added 2-22-1982 by O-15668 N.S.)

§61.2335 Same: Notice to Property Owners

At least twenty (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.

(“Same: Notice to Property Owners” added 2-22-1982 by O-15668 N.S.)

§61.2336 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 or improvement, or both 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 2-22-1982 by O-15668 N.S.)

§61.2337 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 the Division for publishing, posting, and mailing notices.

(“Same: Affidavit of Clerk” added 2-22-1982 by O-15668 N.S.)

**Part 4
Protest**

(Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.)

§61.2340 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 2-22-1982 by O-15668 N.S.)

§61.2341 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 (6) 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 2–22–1982 by O–15668 N.S.)

§61.2342 Same: Majority Protests

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 Protests*” added 2–22–1982 by O–15668 N.S.)

§61.2343 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 66410, California Government 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 2–22–1982 by O–15668 N.S.)

§61.2344 Protests: Confirmation of Assessment

When upon the hearing the proposed assessment is confirmed as filed, as modified, or corrected, the Council by resolution shall approve the making of the proposed acquisition and improvement, declare that the funds collected from the assessments or sale of bonds be utilized for said purposes 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 2-22-1982 by O-15668 N.S.)

Part 5**Change of Work, Boundaries of Assessment District,
Amounts of Assessments or Proceedings**

(Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.)

§61.2350 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 shall be harmonized to conform to the provisions of this Division and as harmonized they 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 2-22-1982 by O-15668 N.S.)

Part 6**Levying and Collecting the Assessment**

(Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.)

§61.2360 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 shall be harmonized to conform to the provisions of this Division and as harmonized they 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 2-22-1982 by O-15668 N.S.)

§61.2361 Collection by County Treasurer - Tax Collector of Special Assessments

The General law of the State of California does not provide for a County secured tax roll collection of special assessments. To allow efficiency in collecting special assessments levied by the Council, this Section establishes a procedure authorizing County-secured property tax roll collection.

- (a) Any special assessment levied by the Council pursuant to the general law of the State may be collected in accordance with the Landscaping and Lighting Act of 1972, which allows for collection of certain special assessments by County-secured property tax roll collection.
- (b) Following Council’s levying a special assessment pursuant to the general law of the State of California or Charter section 79, the Council directs the following:
 - (1) The City Clerk shall prepare a certified copy of Ordinance No. O-18633, adopted April 12, 1999; and
 - (2) The City Manager shall deliver a certified copy of Ordinance No. O-18633, adopted April 12, 1999, along with a list of the special assessments and any and all additional information or documents required by the 1972 Act and by the County Treasurer - Tax Collector to the County Treasurer - Tax Collector of the County of San Diego.

- (c) All special assessments to be levied on the County-secured property tax roll pursuant to Section 61.2361 shall be calculated to include all charges imposed by and payable to the County Treasurer - Tax Collector for performing the tax collection services required by Section 61.2361.

(*“Collection by County Treasurer - Tax Collector of Special Assessments” added 4-12-1999 by O-18633 N.S.*)

Part 7 Improvement Bonds

(Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.)

§61.2370 Improvement Bonds

Any improvement bonds issued under this division may be issued as provided for in Division 7, Part 5 of the California Streets and Highways Code (Improvement Act of 1911) commencing with Section 6400 thereof or in Division 10 of said Streets and Highways Code (Improvement Bond Act of 1915) commencing with Section 8500. All of the provisions of said Improvement Act of 1911 and Improvement Bond Act of 1915 shall be harmonized to conform to the provisions of this Division and as harmonized they 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 12-12-1988 by O-17196 N.S.)

§61.2376 Previously Initiated Proceedings

The Council may determine that improvement bonds shall be issued as provided in this Part 7 to represent and be secured by assessments which shall be made to pay the cost of any work, improvement, or acquisition which is made in any of the streets, avenues, lanes, alleys, courts, public places or public ways of the City, or in, over, or through any property or rights of way owned by the City, and which is authorized, in proceedings initiated either prior to or subsequent to the effective date of this Division 23, by Division 12 of the California Streets and Highways Code (Municipal Improvement Act of 1913) or by Division 7 of the California Streets and Highways Code (Improvement Act of 1911), or which is made to pay the cost of any other work, improvement, or acquisition which is charged and assessed upon real property pursuant to any other provisions of law, including any other provision of the San Diego Municipal Code.

(*“Previously Initiated Proceedings” added 2-22-1982 by O-15668 N.S.*)

Part 8**Urgency Proceedings**

(*Editors note: Chapter 6, Article 1, Division 23 added 8-24-1988.*)

§61.2380 Urgency Proceedings

In the event there is an urgent need 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 such an urgent need exists for the acquisition and improvement and by resolution may direct that the City proceed with the project and that funds be advanced therefor. Thereafter, the City shall cause assessment proceedings to be instituted under this Division.

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.

(“*Urgency Proceedings*” added 2-22-1982 by O-15668 N.S.)

Part 9**Establishment of the Special Assessment District Delinquency Fund**

(“*Establishment of the Special Assessment District Delinquency Fund*”
added 12-8-1992 by O-17882 N.S.)

§61.2390 Fund Established

There is hereby established a fund known as the Special Assessment District Delinquency Fund to help fulfill the purposes of this Chapter.

(“*Fund Established*” added 12-8-1992 by O-17882 N.S.)

§61.2391 Payments on Delinquent Accounts, Penalties and Interest

Whenever payments are received by the City Treasurer consisting of penalty and interest charges imposed upon delinquent amounts assessed under the provisions of the Improvement Bond Act of 1915, the provisions of the Mello-Roos Community Facilities District Act or the provisions of the Lighting and Landscape Improvement Act of 1972, the payments shall be placed in the Special Assessment District Delinquency Fund.

Interest earnings on the monies on deposit shall remain in the Special Assessment District Delinquency Fund, notwithstanding the provisions of Section 61.2393.

(*"Payments on Delinquent Accounts, Penalties and Interest"* added 12-8-1992 by O-17882 N.S.)

§61.2392 Expenditures From Special Assessment District Delinquency Fund Restricted

Funds deposited in the Special Assessment District Delinquency Fund may be expended for:

- (a) The payment of costs incurred in fulfilling the City's duties under a bond indenture or any similar obligation.
- (b) The payment of costs incurred in litigation defending the District or protecting the integrity of the District, including litigation costs for proceedings in bankruptcy. C. The payment to the General Fund of amounts in excess of the maximum balance, as defined in Section 61.2393.

(*"Expenditures From Special Assessment District Delinquency Fund Restricted"* added 12-8-1992 by O-17882 N.S.)

§61.2393 Disposition of Balance in the Special Assessment District Delinquency Fund

The Special Assessment District Delinquency Fund shall not exceed a maximum balance equal to 1% of the outstanding principal balance of bonds issued by The City of San Diego under the Improvement Bond Act of 1915 and the Mello-Roos Community Facilities District Act. Such amount shall be determined from time to time. Any excess amounts shall be paid to the General Fund.

(*"Disposition of Balance in the Special Assessment District Delinquency Fund"* added 12-8-1992 by O-17882 N.S.)