

Article 1: Public Improvement and Assessment Proceedings**Division 6: Open Space Lands for Park and Recreation Purposes Formation**

(“*Open Space Lands for Park and Recreation Purposes Formation*”
added 2-27-1969 by O-9976 N.S.)

§61.0601 Purpose and Intent

The purpose and intent of this ordinance is to establish procedural methods by which open space lands may be acquired, improved and maintained for park and recreation purposes. The City may acquire open space lands by succession, annexation, purchase, devise, lease, gift or condemnation.

“Open space land” means any land or water area:

- (a) which is primarily in its natural state and has value for park and recreation purposes, and
- (b) which, in the opinion of the City Council of the City,
 - (1) conforms to the criteria established for open space land set forth in the “Progress Guide and General Plan for The City of San Diego” as amended, and
 - (2) would, if retained in its natural state or improved, enhance the present or potential value of abutting or surrounding properties or would maintain or enhance the conservation of natural or scenic resources.

(Amended 10-14-1971 by O-10716 N.S.)

A. General**§61.0601.1 Citation**

This Ordinance, consisting of Divisions 6, 7 and 8 of Article 1, Chapter 6 of the San Diego Municipal Code, may be cited as the San Diego Park District Procedural Ordinance of 1969.

(“*Citation*” added and amended 7-10-1969 by O-10084 N.S., formerly Sec. 61.0602.)

§61.0601.2 Divisions 6, 7 and 8 — In General

Proceedings may be taken under this Ordinance pursuant either (1) to Divisions 6 and 7 or (2) to Division 8.

(“*Divisions 6, 7 and 8 — In General*” added 7-10-1969 by O-10084 N.S.)

§61.0601.3 Divisions 6, 7 and 8 — Petitions

A petition may state that it is filed pursuant either (1) to Divisions 6 and 7 or (2) to Division 8. If proceedings are initiated by petition, the proceedings shall be taken pursuant to the division or divisions stated in such petition. If no such statement is made in the petition or if the proceedings are initiated by resolution of the Council, proceedings may be taken pursuant either (1) to Divisions 6 and 7 or (2) Division 8, as the Council may determine.

(“*Divisions 6, 7 and 8 — Petitions*” added 7-10-1969 by O-10084 N.S.)

§61.0601.4 Divisions 6, 7 and 8 — Resolution of Intention

The resolution of intention shall specify that the proceedings are taken pursuant either (1) to Divisions 6 and 7 or (2) Division 8 and only the provisions of the division or divisions so specified shall be applicable to proceedings taken under such resolution of intention.

(“*Divisions 6, 7 and 8 — Resolution of Intention*” added 7-10-1969 by O-10084 N.S.)

§61.0601.5 Ordinance References

References to “this Ordinance” in Divisions 6 and 7 shall be deemed to refer only to the provisions of Divisions 6 and 7. References to “this Ordinance” in Division 8 shall be deemed to refer only to said Division 8 and such provisions of Divisions 6 and 7 as are expressly incorporated in Division 8.

(“*Ordinance References*” added 7-10-1969 by O-10084 N.S.)

§61.0603 Acts Authorized to be Done

In addition to matters specified elsewhere in this Ordinance, the acts authorized under this Ordinance include the following:

- (a) The formation of districts.
- (b) The acquisition of lands, property, and rights of way necessary or convenient for park and recreation purposes.
- (c) The acquisition by condemnation, purchase, or gift of property or any interest therein. Any lands or property necessary or convenient for park and recreation purposes may be acquired in fee simple by condemnation or otherwise.
- (d) The improvement of any acquired lands as is necessary or convenient for park and recreation purposes.
- (e) The levy and collection of assessments to pay the cost and expense of any acquisition or improvement authorized by this Ordinance, and the issuance, sale and payment of bonds representing and secured by such assessments.
- (f) The levy of taxes to pay all or any part of the cost of maintaining and operating lands acquired.
- (g) The employment of engineers, attorneys, and other persons necessary or convenient for the doing of any act authorized by this Ordinance.
- (h) The doing of all acts and things necessary or convenient for the accomplishment of the purposes of this Ordinance. The enumeration of specific authority in this Section does not limit in any way the general authority granted by this Ordinance.
(“Acts Authorized to be Done” added 2-27-1969 by O-9976 N.S.)

§61.0604 Notice

Whenever any notice is to be given pursuant to this Ordinance and the officer to give the notice is not designated, the notice shall be given by the City Clerk. Any notice shall not be invalidated because given or done by an officer other than the one whose duty it is to give the notice.

(“Notice” added 2-27-1969 by O-9976 N.S.)

§61.0605 Compliance with Ordinance

Any proceedings taken, assessment levied, or bond issued pursuant to this Ordinance shall not be held invalid for failure to comply with the provisions of this Ordinance.

(“Compliance with Ordinance” added 2-27-1969 by O-9976 N.S.)

§61.0606**Necessary or Convenient Procedure Authorized**

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

(“*Necessary or Convenient Procedure Authorized*” added 2-27-1969 by O-9976 N.S.)

§61.0607**Nonexclusiveness of Remedies**

The remedies provided in this Ordinance for the enforcement of any assessment levied or bond issued pursuant to this Ordinance are not exclusive, and additional remedies may be provided at any time.

(“*Nonexclusiveness of Remedies*” added 2-27-1969 by O-9976 N.S.)

§61.0608**Curative Clauses**

The curative clauses of this Ordinance are cumulative, and each is to be given full effect.

(“*Curative Clauses*” added 2-27-1969 by O-9976 N.S.)

§61.0609**Abandonment of Proceedings**

Any proceeding for the creation of a park district and the acquisition and improvement of lands pursuant to this Ordinance may be abandoned by the Council prior to the issuance of bonds for the acquisition and improvement of the lands.

(“*Abandonment of Proceedings*” added 2-27-1969 by O-9976 N.S.)

§61.0610**Scope of Proceedings**

Notwithstanding any provision of this Ordinance, any proceeding for the formation of a park district pursuant to this Ordinance may provide for the acquisition of property for park and recreation purposes or for both such acquisition and its improvement.

(“*Scope of Proceedings*” added 2-27-1969 by O-9976 N.S.)

§61.0611**Effect upon other Acts**

This Ordinance does not affect any other law relating to the same or any similar subject, but provides an alternative authority and procedure for the subject to which it relates. When proceeding under this Ordinance, its provisions only need be followed.

(“*Effect upon other Acts*” added 2-27-1969 by O-9976 N.S.)

§61.0612 Construction

This Ordinance shall be liberally construed.

(“Construction” added 2-27-1969 by O-9976 N.S.)

B. Formation of District**§61.0615 Petition**

The formation of a park district may be proposed by petition signed by the owners of at least sixty percent (60%) of the area of assessable lands in the proposed district or initiated by resolution of the City Council. The petition shall be filed with the City Clerk.

(“Petition” added 2-27-1969 by O-9976 N.S.)

§61.0616 Assessable Lands

For the purpose of applying Section 61.0615, assessable lands shall be deemed to be those lands which will be assessed if the district is formed and the acquisitions made as proposed in the petition, and if any of the lands within the proposed district are public lands of the type described in Section 61.0705, such lands shall be deemed assessable lands only if the governing body of the owner of such lands shall have filed its consent to the assessment of such lands on or before the date of filing with the Clerk of the petition, or supplemental petitions, if any.

(“Assessable Lands” added 2-27-1969 by O-9976 N.S.)

§61.0617 Petition — Contents

The petition shall as applicable contain:

- (a) A general description of the exterior boundaries of the proposed district or reference to an attached map showing such boundaries.
- (b) A general description of the lands to be acquired for park and recreation purposes, which may lie wholly or partially outside or inside the boundaries of the district.
- (c) A general description of the improvements proposed to be made or constructed.

- (d) A general description of the maintenance desired.
- (e) A statement that an advisory board has been created to advise the City on the establishment and operation of the district, and the names of the membership thereof.
- (f) A request that bonds be issued pursuant to this Ordinance and the term of, and interest rate, or maximum interest rate, to be paid on, the bonds.
- (g) A statement that the petition is filed pursuant to this Ordinance.
- (h) A statement that the provisions of the Special Assessment, Investigation, Limitation and Majority Protest Act of 1931 are waived in accordance with Division 1, Article 1, Chapter 6, of the San Diego Municipal Code.
(“Petition — Contents” added 2-27-1969 by O-9976 N.S.)

§61.0618 Petition — Separate Instruments

The petition may consist of any number of separate instruments.

(“Petition — Separate Instruments” added 2-27-1969 by O-9976 N.S.)

§61.0619 Petition, Filing, Checking

When the petition is filed, the Clerk shall check or cause it to be checked. If it is signed by the requisite number of qualified signers, the Clerk shall make his certificate to that effect and present the petition and certificate to the Council.
(“Petition, Filing, Checking” added 2-27-1969 by O-9976 N.S.)

§61.0620 Petition — Insufficient Signatures

If the petition is not signed by the requisite number of qualified signers, the Clerk shall certify to the Council that said petition is insufficient. If the petition is insufficient, supplemental petitions may be filed within three months from the date of the certificate of insufficiency, or such additional period as the Council may allow, not to exceed six months from the date of the first certificate of insufficiency.
(“Petition — Insufficient Signatures” added 2-27-1969 by O-9976 N.S.)

§61.0621 Clerk Certification

The Clerk shall certify the sufficiency of the petition and any supplemental petitions to the Council if the petition, together with supplemental petitions, if any, shall be

signed by the requisite number of signers as shown by the last equalized assessment roll upon the date of said certificate. Such certification shall be conclusive as to the sufficiency of the petition.

(*"Clerk Certification"* added 2-27-1969 by O-9976 N.S.)

§61.0622 Legal Representative

If any person shown on the last equalized assessment roll to be the owner of land within the proposed district shall be unable to sign by reason of legal disability or shall cease to be the owner of all or any part of such land before the petition or supplemental petition shall have been filed with the Clerk, said petition or supplemental petition may be signed by the legal representative (as hereinafter designated) or other successor in interest of said owner. All petitions signed by a person other than said owner shall be accompanied by written evidence, satisfactory to the Clerk, that the signer:

- (a) In the case of a legal representative, is the duly appointed guardian, executor or administrator of the estate of said owner, or
- (b) In the case of other successors in interest, is the holder of legal title to, or has the beneficial ownership in, said land.

(*"Legal Representative"* added 2-27-1969 by O-9976 N.S.)

§61.0623 Resolution of Intention

If the Council finds and declares in the resolution of intention that the public interest and necessity require the acquisition and improvement described in the petition and that the property proposed to be acquired is necessary for the purpose, it may adopt a resolution declaring its intention to form the park district and to acquire the lands and rights of way, if any, and construct the proposed improvements.

(*"Resolution of Intention"* added 2-27-1969 by O-9976 N.S.)

§61.0624 Same: Contents

The resolution shall as applicable also contain:

- (a) The number of the proposed park district and a general description of its exterior boundaries or refer to a map on file with the City Clerk showing such boundaries, which map shall govern for all details as to the extent of this district.

- (b) A general description of the lands to be acquired for park and recreation purposes, which may lie wholly or partially outside or inside the boundaries of the proposed district.
- (c) A general description of the improvements proposed to be made or constructed.
- (d) A general description of the maintenance desired and the maximum tax levy necessary to finance said maintenance.
- (e) An estimate of the cost and expense of the proposed acquisition and improvement.
- (f) A statement that an assessment will be levied pursuant to this Ordinance to pay the costs and expenses of the acquisition and improvement.
- (g) If bonds are to be issued, a statement that bonds to represent unpaid assessments will be issued pursuant to this Ordinance and the interest rate or maximum interest rate, and term of any such bonds.
- (h) A time and place for the hearing of protests and objections.
(“Same: Contents” added 2-27-1969 by O-9976 N.S.)

§61.0625 Costs Paid by City

At any time prior to the levy of the assessment, the Council may determine that a portion of the costs and expenses of the proposed acquisition and improvement shall be paid by the City.

If a determination that a portion of the costs and expenses shall be paid by the City is made prior to the adoption of the resolution of intention, the amount to be contributed under the determination shall be stated in the resolution and the resolution shall provide that an assessment will be levied pursuant to this Ordinance to pay the balance of costs and expenses of the acquisition and improvement.
(“Costs Paid by City” added 2-27-1969 by O-9976 N.S.)

§61.0626 Publication of Copy

The resolution shall be published once in the City official newspaper. The publication shall be not less than ten (10) days prior to the date fixed for the hearing of protests.
(“Publication of Copy” added 2-27-1969 by O-9976 N.S.)

§61.0627 Mailing of Notice

Notice of the adoption of the resolution shall be mailed, postage prepaid, by the Clerk to each person to whom land in the district is assessed as shown on the last equalized County assessment roll, at his address as shown upon the roll and to any person, whether owner in fee or having a lien upon or legal or equitable interest in, any land within the district, whose name and address and a designation of the land in which he is interested is on file in the office of the Clerk.

(“*Mailing of Notice*” added 2-27-1969 by O-9976 N.S.)

§61.0628 Objections

Not later than the hour set for hearing, any owner of, or person interested in, any land within the proposed district may severally or with other owners file with the Clerk written objection to the things proposed to be done, the extent of the proposed district, or both.

(“*Objections*” added 2-27-1969 by O-9976 N.S.)

§61.0629 Same: Hearing

At the hearing all objections and protests shall be heard and considered.

(“*Same: Hearing*” added 2-27-1969 by O-9976 N.S.)

§61.0630 Same: Termination of Proceedings

If at the hearing and after all proceedings, if any, taken at the hearing for a change of boundaries have been concluded, it appears that the owners of more than one-half of the area of the land included within the proposed district and subject to assessment have made objection in writing to the doing of the things proposed to be done as an entirety, the Council shall so find. Thereafter, the legislative body shall not proceed further under the resolution of intention, and the proceeding is terminated.

(“*Same: Termination of Proceedings*” added 2-27-1969 by O-9976 N.S.)

§61.0631 Same: Further Proceedings

If the owners of more than one-half of the area of the property included within the district and subject to assessment have not made written objections or protests to the things proposed to be done as an entirety, the Council may so find orally or otherwise and proceed with the hearing.

(“*Same: Further Proceedings*” added 2-27-1969 by O-9976 N.S.)

§61.0632 Modification of Boundaries

At the hearing the Council may:

- (a) Modify the boundaries of the proposed district.
- (b) Add to the district land which in its opinion will be benefited.
- (c) Exclude from the district any land described in the resolution of intention which it finds will not be benefited by the doing of the things proposed to be done.

(“*Modification of Boundaries*” added 2-27-1969 by O-9976 N.S.)

§61.0633 Same: Notice

The hearing may be continued from time to time by order entered on the minutes. The Council shall not change the boundaries to include additional land in the district except after notice of intention to do so, given by the Clerk by mailing a copy of the notice to each person to whom land in the area proposed to be added is assessed as shown on the last equalized assessment roll, at his address as shown upon the roll. The notice shall describe the proposed change and specify the time for hearing objections, which shall be at least fifteen (15) days after date of mailing of the notice. (“*Same: Notice*” added 2-27-1969 by O-9976 N.S.)

§61.0634 Same: Computation

If the boundaries are changed, objections or protests made by owners of land excluded by the change shall not be counted in computing a majority protest, but written objections or protests to the things proposed to be done as an entirety made by owners of the remaining assessable land in the district, including assessable land added by a change, and filed with the Clerk not later than the time set for hearing objections to the proposed change, shall be included in computing a majority protest. (“*Same: Computation*” added 2-27-1969 by O-9976 N.S.)

§61.0635 Land not Benefited

Any land which in the judgment of the Council will not be benefited shall not be included in the district.

(“*Land not Benefited*” added 2-27-1969 by O-9976 N.S.)

§61.0636 Change or Modification

At the hearing the Council may decrease, change or otherwise modify the acquisitions or improvements proposed by the resolution of intention.
(“*Change or Modification*” added 2-27-1969 by O-9976 N.S.)

§61.0637 Termination by Majority Protest

If the proceedings are terminated by a majority protest, a proceeding under this Ordinance for the same, or substantially the same acquisition and improvement shall not be initiated within one year thereafter.
(“*Termination by Majority Protest*” added 2-27-1969 by O-9976 N.S.)

§61.0638 Withdrawal of Protest

Any protest or objection made pursuant to this Ordinance, or any signature to such objection or protest, may be withdrawn by a written withdrawal signed by the person or persons who signed the protest or objection or who affixed the signature to be withdrawn, and filed with the Clerk at any time prior to the determination by the Council as to whether or not a majority protest exists. Any protest, objection, or signature withdrawn shall not be counted in computing a majority protest.
(“*Withdrawal of Protest*” added 2-27-1969 by O-9976 N.S.)

§61.0639 Waiver of Protest

Any objections or protests not made at the time and in the manner provided by this Ordinance are deemed waived voluntarily.
(“*Waiver of Protest*” added 2-27-1969 by O-9976 N.S.)

§61.0640 Determination of Protest

Except in the case of a majority protest, the Council may sustain or deny by resolution any or all objections and protests, and its determination is final.
(“*Determination of Protest*” added 2-27-1969 by O-9976 N.S.)

§61.0641 Estoppel

Proceedings under this Ordinance shall not be attacked after the hearing upon any ground not stated in an objection or protest filed pursuant to this Ordinance. Any landowner or person interested in any land within the district is estoppel to attack the

proceedings upon any ground not stated in a protest filed by him pursuant to this Ordinance.

(“*Estoppel*” added 2-27-1969 by O-9976 N.S.)

§61.0642 Resolution Ordering Formation

Unless the power to proceed has been terminated pursuant to this Ordinance, at the conclusion of the hearing the Council, by resolution, may find and determine that the public interest and necessity require the acquisition and improvement described in the resolution of intention or the acquisition and improvement remaining after any elimination made pursuant to this Ordinance, and may order such acquisition and improvement.

(“*Resolution Ordering Formation*” added 2-27-1969 by O-9976 N.S.)

§61.0643 Formation Declared — Boundaries Established

If the acquisition and improvement are ordered, the Council shall fix and establish the boundaries of the district and declare that the district is formed pursuant to this Ordinance.

(“*Formation Declared — Boundaries Established*” added 2-27-1969 by O-9976 N.S.)

§61.0644 Designation of District

Each park district formed pursuant to this Ordinance shall be numbered, and the designation of the district shall be substantially (using appropriate number) “Park District No. _____ of The City of San Diego.”

(“*Designation of District*” added 2-27-1969 by O-9976 N.S.)

§61.0645 Limitation of Actions

Any action or proceeding to attack, review, set aside, avoid or annul the resolution ordering the acquisition and improvement and declaring the district formed, or any of the proceedings, acts or determinations pursuant to this Ordinance taken, done or made prior to the adoption of such resolution shall not be maintained by any person unless such action or proceeding is commenced within sixty (60) days after the date of adoption of such resolution. Thereafter all persons are barred from any such action or proceeding or any defense of invalidity of such resolution or of such proceedings, acts or determinations.

(“*Limitation of Actions*” added 2-27-1969 by O-9976 N.S.)

§61.0646 Effects of Defect or Error

Any defect, error, or informality in the petition, the Clerk's certificate, the publication, or mailing of notices, or of the landowner or person interested in the land to receive the notice shall not invalidate any proceeding pursuant to this Ordinance.
(*"Effects of Defect or Error"* added 2-27-1969 by O-9976 N.S.)

C. Condemnation**§61.0655 Direction to Bring Action**

In its resolution ordering the things proposed to be done and forming the district, the Council shall make all necessary findings and direct an action to be brought in the Superior Court in the name of the City by the City Attorney for the condemnation of the property necessary to be acquired as described in the resolution.
(*"Direction to Bring Action"* added 2-27-1969 by O-9976 N.S.)

§61.0656 Condemnation of Fee or Lesser Estate

The fee simple title or any lesser estates and interests as necessary of any land to be acquired for park and recreation purposes shall be condemned, but the Council may contract for the purchase of any such land and any land acquired by purchase or by gift shall not be included in the condemnation action or, if included, shall not be condemned.

(*"Condemnation of Fee or Lesser Estate"* added 2-27-1969 by O-9976 N.S.)

D. Change of Work, Boundaries or Proceedings**§61.0657 "Changes"**

"Changes" as used in this chapter shall include corrections, alterations, modifications, additions, omissions, increases or decreases.

(*"Changes"* added 2-27-1969 by O-9976 N.S.)

§61.0658 Time for Change

Unless the power to proceed shall have ceased at the conclusion of the hearing on the resolution of intention because of a majority protest, at any time before the

confirmation of the assessment the Council may make changes in, to or from the boundaries of the proposed assessment district, the work proposed to be done, or any act, determination or provision made, or permitted to be made, by the Council under and pursuant to this Ordinance, which act, determination or provision does not affect the jurisdiction of the Council to order the work or improvement; provided, that after the award of the contract no such changes shall be made without the written consent of the contractor or the bidder to whom the contract shall have been awarded. The Council shall not change the boundaries to include any territory which will not, in its judgment, be benefited by the work.

(“*Time for Change*” added 2-27-1969 by O-9976 N.S.)

§61.0659 Changes Ordered

At the hearing on the resolution of intention, the Council, without further notice and hearing, may order any changes, as defined in Sections 61.0657 and 61.0658, except changes to include additional territory in the assessment district. Any changes to include additional territory and all changes after the hearing on the resolution of intention shall be ordered only provided in this part.

(“*Changes Ordered*” added 2-27-1969 by O-9976 N.S.)

§61.0660 Resolution

Before ordering any changes made, the Council shall adopt a resolution briefly describing the changes proposed to be made, stating the amount of the estimated increase or decrease in the cost of the work by reason of said proposed changes and giving notice of a time and place when and where any interested person having any objection to the changes proposed to be made may appear before the Council and show cause why said changes should not be ordered; said notice shall be omitted if the hearing of objections is not required as provided hereunder. Said resolution may describe said changes by referring to maps, plats, plans, profiles, detailed drawings or specifications on file in the office of the Clerk or Engineer, which shall indicate the changes proposed to be made and which shall govern for all details thereof. The resolution shall be published pursuant to Section 6061 of the Government Code, at least ten (10) days prior to the date of the hearing.

The hearing of objections shall not be required if the Council, when considering passage of the resolution, finds and determines by a majority vote of all members thereof, that all of the owners of lots or lands liable to be assessed, or their agents (who shall make oath that they are such agents), have signed and filed a petition waiving said hearing, with the Clerk, on or before the fifth day prior to the day that the resolution is considered for passage, declaring that they do not have any

objections to the proposed changes and requesting that the hearing of objections shall not be required.

(*"Resolution"* added 2-27-1969 by O-9976 N.S.)

§61.0661 Additional Land

If said resolution proposes to include additional territory in the assessment district, at least fifteen (15) days prior to the hearing fixed therein, the Clerk shall mail a copy of such resolution to all persons owning real property within said additional territory whose names and addresses appear on the last equalized assessment roll or as known to the Clerk. This section shall not apply if the hearing of objections is not required pursuant to Section 61.0660.

(*"Additional Land"* added 2-27-1969 by O-9976 N.S.)

§61.0662 Objections

Written objections to the proposed changes may be filed with the Clerk by any interested person at any time not later than the time set for the hearing. The Council shall hear and pass upon such objections at the time appointed, or at any time to which the hearing thereof may be adjourned, and its decision thereon shall be final and conclusive. If no written objections to said changes have been delivered to the Clerk up to the hour set for hearing thereon, or if said objections have been heard and found by the Council to be insufficient or have been overruled or denied, immediately thereupon the Council by an affirmative vote of four-fifths of its members shall acquire jurisdiction to order said changes made. If the hearing of objections is not required, pursuant to Section 61.0660 immediately upon passage of the resolution the Council shall acquire jurisdiction to order said changes made. The decisions and determinations of the Council ordering such changes shall be final and conclusive upon all persons entitled to appear thereupon to the Council.

(*"Objections"* added 2-27-1969 by O-9976 N.S.)

§61.0663 Limitations

No changes shall be made pursuant to this part which will increase the estimated cost by more than twenty percent (20%) of the total estimated cost of the work as determined from:

- (a) The Engineer's estimate, if the change is ordered prior to the award of the contract; or

- (b) The successful bid, if the change is ordered after the award of the contract; provided, that any changes so made shall also be subject to the limitations, if any, contained in any law applicable to the proceedings, which law may impose limitations upon the amount by which the estimated cost of the work or improvement may be increased by reason of such changes.
(“Limitations” added 2-27-1969 by O-9976 N.S.)

§61.0664 Sureties

Any changes made pursuant to this part shall not release or discharge the sureties upon any bond required under this Ordinance.

(“Sureties” added 2-27-1969 by O-9976 N.S.)