

Meeting Date: 11/18/2020 (05)

ORDINANCE NO. 10695 (NEW SERIES)

AN ORDINANCE AMENDING TITLE 8, DIVISION 1 OF THE COUNTY OF SAN DIEGO CODE OF REGULATORY ORDINANCES TO PROVIDE CLARITY AS TO THE USE, REGULATION, AND RELEASE OF LIEN CONTRACTS AS SECURITY FOR SUBDIVISION IMPROVEMENT AGREEMENTS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the San Diego Code of Regulatory Ordinances should be updated by amending Title 8, Division 1. Lien Contracts as Security. The Board finds that these amendments are reasonable and necessary for the public health, safety, convenience, and welfare.

Section 2. Section 81.409 is amended to read as follows:

SEC. 81.409. LIEN CONTRACT AS SECURITY.

(a) Pursuant to Government Code section 66499(a)(4), when the County finds that it would not be in the public interest to require installation of required improvements sooner than two years after recording the map the County may allow the subdivider, in lieu of posting the security described in section [81.408](#), to enter into a lien contract with the County to construct the required improvements in the future, securing the subdivider's performance by granting the County a lien on the property to be subdivided.

(b) Where the County agrees to allow the subdivider to enter into a lien contract with the County, the subdivider shall execute the lien contract at the time the subdivider enters into an agreement with the County to construct required improvements pursuant to section 81.404. The County may at its sole option allow a subdivider to substitute a lien contract for existing security that the subdivider furnished under section [81.408](#). The County shall not accept a lien contract from any subdivider, however, either at the time the subdivider executes an agreement to construct subdivision improvements or as a substitute for existing security, if any lots have been sold, if permits have been issued on any of the property or if construction of any of the required improvements has begun.

(c) Lien contracts shall:

(1) Only be used to secure the completion of improvements.

(2) Contain an itemization of the required improvements and an estimate of cost approved by the Director and provide that the subdivider's or subsequent owner's obligation to complete the improvements extends to the actual cost of construction if the cost exceeds the estimate.

(3) Be recorded with the County Recorder and have the priority of a judgment lien as prescribed by Government Code section 66499(b).

(4) Be approved concurrently with the approval of the map with a note of the lien contract's existence placed on the map, except where the lien contract is being substituted after map approval for other security previously deposited with the Clerk of the Board pursuant to section [81.408](#). In that case, the lien contract shall be signed and acknowledged by all parties

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having any record title interest in the real property, as prescribed by Government Code section 66436, consenting to the subordination of their interests to the lien contract.

(d) The lien contract shall provide that the subdivider shall substitute security acceptable to the County for the lien contract and commence constructing the improvements required pursuant to section [81.404](#): (1) within two years after recording the map or (2) in the case of a lien contract which has been substituted for existing security pursuant to subsection (b), above, within two years after recording the lien contract.

(e) For lien contracts executed at the time the map is recorded, the Director may extend the time for substituting acceptable security and commencing construction of the required improvements once, for no more than two additional years. The Director may not grant these extensions if the subdivider has substituted a lien contract for the security originally furnished under section [81.408](#). The Board, however, may grant additional time extensions, on a case-by-case basis, for substituting acceptable security and commencing construction of the required improvements pursuant to agreements secured either by: (1) lien contracts executed at the time the map is recorded or (2) lien contracts substituted for existing security furnished under section [81.408](#).

(f) During the term of the lien contract no individual lots subject to the lien shall be sold. Fee title to the entire property encumbered by the lien contract, however, or to all lots designated on any individual final map or parcel map that are encumbered by the lien contract, may be sold in the aggregate to a single purchaser, provided that the proposed purchaser of the property, prior to assuming title to the property, shall either: (1) execute a new lien contract in a form acceptable to the County which will encumber the property to be conveyed, specifying the respective obligations of the property owners subject to the original and the new lien contract or (2) replace the existing lien contract with alternative security acceptable to the County to guarantee completion of the required improvements. The alternative security shall meet the requirements of section 81.408. If the proposed purchaser is a holding company or a limited liability company, however, the property owner shall obtain approval from the Director before entering into the sales agreement. Any new lien contract shall require that the new property owner commence construction of the improvements secured by the lien contract by the same date provided in the lien contract with the original owner, unless the Board extends the date as provided in subsection (d), above. The new lien contract shall also provide that the new property owner shall deposit alternative security acceptable to the County that meets the requirements of section [81.408](#) at the time the property owner is required to commence construction of the improvements.

(g) At the time the Board approves a lien contract, the subdivider shall provide a cash deposit in the amount of \$15,000 to the Clerk of the Board for the purpose of reverting the property to acreage or processing a replacement map merging the parcels subject to the lien contract into a single lot if the subdivider breaches the terms of the lien contract. In addition, at the time title to any property subject to a lien contract is conveyed, the transferee of the property, if the transferee executes a new lien contract to secure construction of the improvements imposed on the property as described in subsection (f), above, shall also provide a cash deposit in the amount of \$15,000 to the Clerk of the Board for the purpose of reverting the property to acreage through reversion or merger of lots if the transferee breaches the terms of the lien contract. The purpose of these requirements is so that each owner of property which is encumbered by a lien contract shall at all times have a \$15,000 deposit per lien contract with the County for the purpose described. Any unused portion of a deposit shall be refunded following completion of the reversion to the person who made the deposit. If the cost to revert the property to acreage exceeds \$15,000 the property owner shall pay the additional costs to the County prior to recording the reversion to acreage or

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merger map. By electing to use a lien contract as security, the owner of the property subject to the lien contract consents to the reversion to acreage or merger of the subdivision lots subject to a lien to a single lot in the event of default, subject to the reservation of publicly dedicated land in accordance with applicable law, and agrees to process and sign, if necessary, upon the County's request any modifying or replacement map necessary to complete the reversion.

(h) When a lien contract is utilized as security upon approval of the map, notwithstanding the provisions of sections [81.402](#) and [81.404](#), the County shall not accept offers of dedication for street purposes until the lien contract is released following substitution of acceptable alternative security and the required street improvements are completed to the satisfaction of the Director DPW.

(i) The County shall release a lien contract after: (1) the subdivider or subsequent property owner substitutes security for the lien contract that complies with section [81.408](#), or (2) recording a reversion to acreage or modifying map merging the parcels subject to the lien contract into a single lot.

(j) The County may at any time release a portion of the property subject to a lien contract or subordinate the lien to other liens or encumbrances if it determines that security for performance is sufficiently secured by a lien on other property or other security that complies with section 81.408, or that the release or subordination of the lien will not jeopardize the completion of agreed upon improvements. Lots subject to a lien contract must be contiguous. Partial releases of lien contract authorized in conjunction with the provision of alternative security for the construction of a portion of the required improvements will only be allowed where the improvements released from the lien contract and lots that they serve can function as an independent unit, the improvements are separately delineated or readily identifiable on improvement plans, and, if deemed necessary by County, separate subdivision improvement agreements are entered into for the improvements secured by a lien and other acceptable security.

Approved as to form and legality

By: Suedy Alfaro, Senior Deputy County Counsel

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 18th day of November 2020.



GREG COX
Chairman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Gaspar, Fletcher, Desmond

ATTEST my hand and the seal of the Board of Supervisors this 18th day of November 2020.

ANDREW POTTER
Clerk of the Board of Supervisors

By



Joana Santiago, Deputy



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