

TO: FACILITIES\WATER RESOURCES COMM.

REVIEWED: MARIO IGLESIAS
GENERAL MANAGER

FROM: CRAIG STEELE
DISTRICT LEGAL COUNSEL

DATE: MARCH 2, 2020

AGENDA ITEM

2

MARCH 4, 2020

REVIEW PROPOSED ORDINANCE TO PROVIDE FOR REIMBURSEMENT OF COSTS OF CONSTRUCTING IMPROVEMENTS FOR THE BENEFIT OF THE DISTRICT

ITEM

Review Proposed Ordinance to Provide the Authority for the District to Reimburse Developers and Applicants for the Costs of Constructing Improvements for the Benefit of the District [RECOMMEND REVIEW AND DISCUSS REVISIONS AND, IF APPROPRIATE, RECOMMEND FULL BOARD ADOPT ORDINANCE]

BACKGROUND

From time to time, developers or applicants may be asked to install “oversize” water or sewer improvements in connection with a project that will serve not only the project itself, but also adjacent properties when those properties develop. The District’s existing code provides the District the authority to enter into an agreement with the developer or applicant to collect the costs of the “oversize” improvements from future developers or applicants and reimburse those funds to the party that incurs the cost of construction.

In the future, staff can foresee cases where the District may need to have improvements constructed or installed as a part of a development that will benefit all of the District’s customers. In those cases, the District needs the authority to spread the costs and reimburse the developer or applicant for improvements that are called out in the current Master Plan, or that are indicated as improvements for the District as a part of a hydraulic study. Combining construction with project-related improvements would be more efficient and less disruptive. This proposed ordinance would give the District, subject to Board approval, the authority to enter into a reimbursement agreement in this situation.

The District’s existing review and cost-allocation process would apply to reimbursements of this type, so that the District would only reimburse those costs that the District Engineer determines will benefit the District as a whole, and not individual private properties. It is anticipated that the need for such an agreement would be relatively rare, but having the legal authority in place enables the District and the Board to act if an opportunity arises.

FISCAL IMPACT

Budgeted staff time was used to prepare, review, and drafting the proposed ordinance.

STRATEGIC PLAN

Strategic Plan Goal 6. – Governance and Administration. Periodically review, update and reaffirm District policies and procedures.

RECOMMENDATION

Staff recommends that the Committee review and discuss the proposed ordinance and, if appropriate, recommend that the full Board review and adopt the ordinance.

ATTACHMENT

- A. Ordinance No. 2020-XXX: Ordinance Adding Provisions Relating to District Facility Cost Reimbursements (Blackline)
- B. Ordinance No. 2020-XXX: Ordinance Adding Provisions Relating to District Facility Cost Reimbursements (Clean)

MARCH 4, 2020

ITEM 2

ATTACHMENT A

ORDINANCE NO. 2020-XXXX

**AN ORDINANCE OF BOARD OF THE DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING CHAPTER 5.01 OF THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE AND ADDING
PROVISIONS RELATING TO DISTRICT FACILITY COST REIMBURSEMENTS**

The Board of Directors of the Nipomo Community Services District ordains as follows:

SECTION 1. From time to time, developers or other private parties construct certain water and/or sewer facilities that benefit both an individual property or project as well as the customers of the Nipomo Community Services District as a whole, either as a condition of development or through an agreement. The costs of these facilities should equitably be shared by the developer and the customers of the district. The purpose of this ordinance is to authorize a mechanism whereby customers who construct such facilities may be reimbursed by the district for a determined amount of excess costs of construction and installation in specified circumstances.

SECTION 2. Section 5.01.010 of the Nipomo Community Services District Code ("District Code") is hereby amended to read as follows (text added is underlined, text deleted is ~~struck through~~).

"5.01.010 - Purpose and applicability.

- A. The district may impose a requirement that improvements installed by a developer for the benefit of the developer's project shall contain supplemental size, capacity, number, or length for the benefit of property not within the subdivision and that those improvements be dedicated to the district.
- B. The district may impose a requirement, or may agree with a developer, for the developer to construct and install district facilities which are called out in the then-current district Water and Sewer Master Plan or the district's most current hydraulic model, or which are otherwise necessary to support the district's Supplemental Water Project or other district projects, and that those improvements be dedicated to the district.
- C. This chapter is intended to provide an equitable procedure for at least partial reimbursement to private parties who construct and dedicate district facilities to serve their private property, if such facilities are also used thereafter to directly serve and benefit private property owned by others, or to provide a means of cost recover through reimbursements if the facilities benefit the district as a whole.
- D. Whenever an applicant is required as a condition of development, to construct and install district facilities, which are dedicated to the district, and which have the future potential and capacity to provide service to real property parcels, not under the control or ownership of the applicant, the reimbursement provisions of this chapter shall apply, unless the district specifically provides otherwise by ordinance or resolution.
- E. Whenever a developer or applicant is required as a condition of development, or agrees with the district, to construct and install district facilities which are called out in the then-current district Water and Sewer Master Plan or the district's most current hydraulic model, or which are otherwise necessary to support the district's Supplemental Water Project or other district projects, are such facilities are not otherwise eligible for reimbursement of excess costs pursuant to this chapter, and are dedicated to and accepted by the district, the "District Facility Construction Cost Reimbursement"

provisions of Section 5.01.065 of this chapter shall apply unless the district specifically provides otherwise by ordinance or resolution. The excess costs of such construction and installation shall be eligible for reimbursement only to the extent the costs thereof are for 'Oversizing' or 'Off-site development' as defined in this chapter. No person shall be eligible for a reimbursement for the cost of constructing and installing facilities necessary to provide water and sewer service to that person's property or properties."

SECTION 3. Section 5.01.065 is hereby added to the District Code to read as follows:

"5.01.065 District Facility Construction Cost Reimbursement

- A. The applicable procedural provisions and requirements of Sections 5.01.030 and 5.01.031 of this Chapter shall be used at the discretion of the District Engineer to determine the amount of a developer's or applicant's District Facility Construction Cost Reimbursement, if any, pursuant to Section 5.01.010.
- B. The District Facility Construction Cost Reimbursements may, in applicable cases, be combined with reimbursements of excess costs as provided in Section 5.010.30, but in no event shall the total reimbursement by this district to any developer or applicant exceed the "Maximum Recovery" of as defined in this chapter and determined by the District Engineer.
- C. Once the Maximum Recovery and final proration of costs of improvements subject to reimbursements pursuant to this Chapter have been established by the District Engineer pursuant to this Chapter, and upon application of the developer or applicant for District Facility Construction Cost reimbursement, the district Board shall consider such requests and the recommendation of the District Engineer and, if granted, shall adopt a resolution stating the total amounts to be reimbursed and the schedule for reimbursement.
- D. If the recipient of such reimbursement sells or otherwise transfers its interest in the property to any other person prior to reimbursement, the transferor shall forfeit to the transferee any further right to reimbursements from the district.

SECTION 4. Any sections, portions of sections, or subsections of the District Code not specifically amended and replaced herein shall remain in full force and effect.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause, or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

SECTION 6. The Board of Directors of the District finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) because it constitutes general policy and procedure making and government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The Board of Directors further finds that the adoption of this Ordinance is not a project as defined in CEQA Guidelines Section 15378 because it can be seen with certainty that it will not result in either a direct physical change in the environment or a reasonably

foreseeable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

SECTION 7. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the fifteenth (15th) day after passage, this Ordinance shall be published, in accordance with Government Code section 25124(b)(2), with the names of the members of the Board of Directors voting for or against the Ordinance in a newspaper of general circulation within the District.

INTRODUCED at its regular meeting of the Board of Directors held on March 25, 2020, and PASSED and ADOPTED by the Board of Directors of the Nipomo Community Services District at its regular meeting on April 8, 2020, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICTS:

DAN ALLEN GADDIS
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MARIO IGLESIAS
General Manager and
Secretary to the Board

CRAIG A. STEELE
District Legal Counsel

MARCH 4, 2020

ITEM 2

ATTACHMENT B

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- B. The district may impose a requirement, or may agree with a developer, for the developer to construct and install district facilities which are called out in the then-current district Water and Sewer Master Plan or the district's most current hydraulic model, or which are otherwise necessary to support the district's Supplemental Water Project or other district projects, and that those improvements be dedicated to the district.
- C. This chapter is intended to provide an equitable procedure for at least partial reimbursement to private parties who construct and dedicate district facilities to serve their private property, if such facilities are also used thereafter to directly serve and benefit private property owned by others, or to provide a means of cost recover through reimbursements if the facilities benefit the district as a whole.
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