

CITY COUNCIL

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☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 12

Date: December 12, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Homi Namdari, Assistant City Engineer

SUBJECT: Revisions to Section 23 (Streets and Sidewalks), Article 5 (Public Improvement Construction, Public Dedication and Mapped Streets) of the Escondido Municipal Code

RECOMMENDATION:

It is requested that Council introduce Ordinance No.2012-21, revising Section 23 (Streets and Sidewalks), Article 5 (Public Improvement Construction, Public Dedication and Mapped Streets) of the Escondido Municipal Code regarding public improvement construction and public dedications required when constructing new buildings or expanding an existing building, as condition of obtaining a Building Permit.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council's Action Plan regarding Community Outreach Economic Development.

BACKGROUND:

Upon application for a building permit to construct a new building or expand an existing building, Chapter 23, Article 5 of the Escondido Municipal Code requires that an applicant construct public improvements across unimproved or under-improved frontage and to grant any necessary public dedication as a condition to obtaining the building permit. This condition has been in place for years and is triggered when the valuation of the building permit exceeds \$23,828. If the monetary threshold is met and it is determined that public improvements and public dedication are required, the applicant is sent to the engineering staff to determine the level of improvements, whether a payment of an in-lieu fee is appropriate or whether a deferral is appropriate. If public improvements and/or public dedication are necessary, the engineering staff evaluates whether there is a reasonable relationship between the conditions imposed on obtaining the permit and the impact the development will have on the City.

Cities have the authority to use their police power to impose conditions on a development project through the dedication of land or the payment of fees. (Cal. Const. art. XI, sec. 7). Historically, courts have held that cities may impose conditions on development so long as the conditions

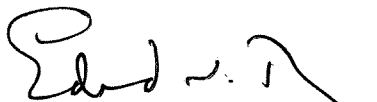
imposed are reasonable, and there is a sufficient nexus between the conditions imposed and the projected burden to the City and its resources. The requirement to construct public improvements and dedicate land is a condition that is often imposed on development due to the impact the development has on the city, such as increased traffic, use of public resources, and potential danger to the public health and welfare. The City has the discretion to require payment of a fee as a condition of approval of a development project, pursuant to the Mitigation Fee Act (Cal. Gov. Code §66001 *et seq.*). After identifying the purpose of the fee and determining if there is a reasonable relationship between the use of the fee and the type of the development project, the public entity must, upon receipt of a fee, either deposit, invest, account for, or expend the fees, in accordance with Cal. Gov. Code §66006 (Cal. Gov. Code §66001).

The Council introduced Ordinance 2008-12 in November 12, 2008. Under Ordinance 2008-12 the Chapter 23, Article 5 was revised to conform to procedures and practices for processing public dedications and improvements.

Introduction of the Ordinance 2012-21 will include the following revisions:

1. Exempt building façade and tenant improvement projects from undergrounding of overhead utilities and public improvement requirements.
2. Exempt building expansion projects in excess of \$23,828 from undergrounding of overhead utilities.
3. Requires in-lieu fee or lien contract as condition of deferral of public improvements required for new, redevelopment, expansion of building projects.

Respectfully submitted,



Edward N. Domingue, P.E.
Director of Engineering Services



Homi Namdari
Assistant City Engineer

ORDINANCE NO. 2012-21

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE ESCONDIDO MUNICIPAL
CODE CHAPTER 23, ARTICLE 5 RELATING TO
PUBLIC IMPROVEMENT CONSTRUCTION AND
PUBLIC DEDICATION REQUIRED WHEN
CONSTRUCTING A NEW BUILDING OR
EXPANDING AN EXISTING BUILDING AS A
CONDITION OF OBTAINING A BUILDING
PERMIT

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN
as follows:

SECTION 1. That the City Council finds that there is a lack of public
improvements conforming to City standards.

SECTION 2. That it is the purpose of the City Council in adopting the
provisions of this article to impose reasonable requirements of public dedication and
public improvements upon persons engaged in the development, construction,
reconstruction or remodeling of buildings which tend to result in increased demands
upon existing public rights-of-way and streets and highways in the City thereby
increasing the danger to public health, safety and welfare; to extend the public
requirements of the Subdivision Map Act by establishing standards and requirements
for dedication of rights-of-way and easements and construction of improvements in
connection with the development, redevelopment or improvement of land in which no
subdivision is involved; and to alleviate the undesirable situation of having a lack of
public improvements conforming to City standards by causing the installation of those

improvements required by the City to serve property about to be developed at the time of its development.

SECTION 3. That the City Council intends to require, in accordance with the provisions of this article, the dedication of a portion of the public rights-of-way including streets, highways, alleys and storm drain facilities and the construction of improvements contiguous to the property in accordance with City standards.

SECTION 4. That Article 5 (Public Improvement Construction, Public Dedication and Mapped Streets) of Chapter 23 of the Escondido Municipal Code is amended to read as follows:

ARTICLE 5. PUBLIC IMPROVEMENT CONSTRUCTION, PUBLIC DEDICATION AND MAPPED STREETS

Sec. 23-118. Definitions.

As used in this article, the following words and phrases shall have the meanings ascribed to them in this section:

Accessory structure means a subordinate or supplementary part of an existing structure.

Applicant means any person, owner, developer, firm, partnership, association, corporation, company, lessee, agent or organization of any kind, constructing or arranging for the construction or enlargement of a building or dwelling.

Building setback area means, in the case of a lot which abuts a street designated for future widening on the circulation plan, that area of such lot which lies within the future right-of-way of such street, plus the area which would be the required setback of the lot under applicable zoning regulations if the street was of the width shown on the circulation plan. In the case of a lot which abuts a mapped street, "building setback area" means the area of such lot which would be the required setback of the lot under applicable zoning regulations if the mapped street were an existing street, except City streets which presently have a width of eighty (80) feet shall be exempt from the provisions of this section if the circulation plan indicates those streets to be of a future width of eighty-four (84) feet.

Circulation plan means the graphic component of the circulation element of the general plan of the City, approved by the Council in accordance with applicable state law, and any amendments thereto.

Lot means any lot, parcel or other real property situated within the City.

Mapped street means a future street, including areas which shall become streets by virtue of widening or alignment of existing streets which are so designated on the circulation plan of the City, any specific alignment plan, the City design standards, or other design studies necessary for the construction of public improvements, as determined by the City Engineer.

Public improvements include curbs, gutters, sidewalks, driveways, paving, base, alleys, bike paths, street lights, traffic signals, signing, striping, storm drainage facilities including payment of all repayment basin fees, sewer and water facilities, relocation of utilities, street trees, street landscaping and all necessary appurtenances thereto.

Public dedication means the dedication or irrevocable offer of dedication of all easements and rights-of-way by the applicant to the City, in conformance with the circulation element of the general plan, master plan, any specific alignment plan, the City design standards, or other design studies, necessary for the construction of public improvements, to the satisfaction of the City Engineer.

Structure means anything constructed or erected from an assembly of materials or component parts and which is attached or affixed to the ground or which is intended to rest other than temporarily thereupon or which is attached to something having a fixed location on or below the ground.

Unimproved or under-improved frontage means any frontage adjoining the property upon which a building or dwelling is constructed or expanded that lacks certain public improvements, or any frontage where existing public improvements do not conform with the latest circulation element of the general plan, specific alignment plan and/or the City design standards.

Sec. 23-119. Public dedication of rights-of-way required.

(a) Subject to the "individualized determination" of section 23-121, any applicant who constructs any new building or dwelling in the City shall grant necessary public dedication or have provided a grant of easement or other appropriate conveyance, as approved by the City Attorney. Accessory structures with a valuation less than twenty-three thousand eight hundred twenty-eight dollars (\$23,828), as determined by building permit valuation, and accessory structures to single-family residences shall be exempt from this section. Rights-of-way shall also be provided for any improvements to existing facilities including rights-of-way for storm drains or other required public facilities. All rights-of-way shall be accompanied by a title examination report and be free of all liens and encumbrances.

(b) The public dedications required by subsection (a) of this section shall also apply to any person who enlarges or expands any building in the City if the cost of such work exceeds the sum of twenty-three thousand eight hundred twenty eight dollars (\$23,828) as determined by building permit valuation. By resolution of City Council, said amount may be increased annually consistent with the International Code Council valuation schedule for the appropriate construction type.

(c) The required public dedications shall be granted prior to issuance of the building permit for the subject property.

(d) In determining the building permit valuation, the building official shall include the cumulative building permit valuation of multiple building permit applications within a twelve (12) month period to determine whether the development is exempt from this section.

Sec. 23-120. Public improvements required.

(a) Subject to the "individualized determination" of section 23-121, any applicant who constructs any building or dwelling in the City shall construct all necessary public improvements in accordance with City specifications upon the property and along all street frontages adjoining the property upon which such building is constructed unless adequate improvements already exist. Accessory structures with a valuation less than twenty-three thousand eight hundred twenty-eight dollars (\$23,828), as determined by building permit valuation, and accessory structures to single-family residences shall be exempt from this section. In each instance, the City engineer shall determine whether the necessary improvements exist and are adequate. Each building permit application shall be so endorsed at the time it is issued. All new and redevelopment projects are subject to undergrounding of overhead utilities.

(b) The improvements required by subsection (a) of this section shall also apply to any person who enlarges or expands any building or dwelling in the City if the cost of such work exceeds twenty-three thousand eight hundred twenty-eight dollars (\$23,828), as determined by building permit valuation.

By resolution of City Council, such amount may be increased annually consistent with the International Code Council valuation scheduled for the appropriate construction type. Tenant and façade improvements to any building that do not result in enlargement or expansion of the building area are exempt from public improvements and undergrounding of overhead utilities.

(c) In determining the building permit valuation, the building official shall examine the cumulative building permit valuation of multiple building permit applications within a twelve (12) month period to determine whether the development is exempt from this section.

Sec. 23-121. Individualized determination.

The City Engineer shall evaluate the proposed development and determine whether public improvements and public dedication are necessary. The City Engineer shall make an individualized determination that the required public improvements and/or public dedications are necessary to mitigate the projected burden of the proposed development. The individualized determination will examine the proposed conditions and ensure that they are related both in nature and extent to the impact of the proposed development.

Sec. 23-122. Level of improvement.

Once the level of improvement and conditions are determined by the City Engineer, the developer shall design public improvements to City standards and guarantee construction by an improvement agreement secured by a bond, cash deposit, or any other means approved by the City Attorney prior to issuance of a building permit for the subject property. If the building permit is not exercised, the improvement obligation shall terminate and the security shall be returned. The City Engineer is authorized to execute such agreement on behalf of the City.

Sec. 23-123. In Lieu Fee for improvements.

At the discretion of the City Engineer, the applicant may pay an in lieu fee for public improvements across the unimproved or under-improved frontage of a parcel with the City in an amount satisfactory to the City Engineer, in lieu of the actual construction of public improvements.

Sec. 23-124. Deferral of improvement requirements.

(a) Upon written application, the City Engineer by written order may defer any of the improvements required by this article upon a finding that the public health, safety and welfare of the residents of the City will not be endangered by the deferment of the construction of the improvements and that any one of the following exists:

(1) There is a lack of adequate data in regard to the grades, plans or surveys which complicate the construction of the improvements and indicate they should be deferred to a later time.

(2) The construction of the improvements is included in an approved or pending assessment district or otherwise guaranteed as provided by City ordinance.

(3) Construction of the improvements would be incompatible with the present state of the neighborhood's development or be impractical or premature because of the condition of the surrounding property.

(4) Construction of the improvements at the present time would create a hazardous or defective condition that may not exist in the future.

(b) When, in the opinion of the City Engineer, the construction of public improvements across the unimproved or under-improved frontage of a parcel is not feasible or practical, and the public improvements are deferred pursuant to subsection (a), the applicant may be allowed to execute a lien contract to defer the construction of the improvements until a later date. The form of said contract shall be approved by the City Attorney's office. The City Engineer is hereby authorized to execute and release the contracts on behalf of the City.

Sec. 23-125. Conditions of deferral.

Any deferral of improvements pursuant to section 23-124 shall be conditioned to execute a lien contract in a form satisfactory to the City Attorney, which provides that the property owner will construct the improvement at such time as an improvement district or neighborhood improvement program is adopted. The City Engineer is authorized to execute such agreement on behalf of the City. Such agreement must be received and recorded prior to issuance of a building permit. If the building permit is not exercised, the City Engineer is authorized to execute a release of agreement for the subject property.

Sec. 23-126. Security requirements.

When public improvements are required to be constructed by this article, the following security along with an agreement to improve shall be posted by the applicant with the City for the improvements in the following amounts, prior to issuance of building permits:

(a) Faithful performance in an amount not less than one hundred (100) percent of the approved engineer's estimate of cost;

(b) Labor and materials in an amount not less than fifty (50) percent of the approved engineer's estimate of cost;

(c) Guarantee and warranty in an amount not less than ten (10) percent of the approved engineer's estimate of cost.

The form of all security and agreements shall be approved by the City Attorney's office.

Sec. 23-127. Duty to deny final approval and occupancy.

The City Engineer and Building Director shall deny final approval and shall refuse to allow final utility connections and any occupancy of any building or dwelling unless all required public dedication have been granted and that all necessary public

improvements across all unimproved or under-improved frontage required by this article are constructed by the applicant and accepted by the City Engineer, except when the City Engineer has determined to defer the installation of such improvements, pursuant to section 23-124, and the required future improvement agreement or lien contract has been received and recorded, pursuant to section 23-125.

Sec. 23-128. Arrangements for relocation of public utility facilities.

If public improvements are required by this article that may necessitate the relocation or alteration of public utility facilities, including but not limited to gas, electricity, telephone, television and water, the City Engineer shall require the applicant to produce satisfactory evidence that he or she has made financial arrangements with the public utility companies for the relocation or modification of said public utility facilities.

Sec. 23-129. Street light energy fees.

Every applicant constructing public improvements in the City as required by this article that include the installation of public street lights shall, prior to obtaining approval, pay to the City a street light energy fee in an amount established by resolution of the council, which shall be amended from time to time.

Sec. 23-130. Dedication acceptance.

The City Engineer or City Real Property agent is hereby authorized to accept on behalf of the City any public dedication offered to the City on a parcel map, subdivision map or by separate document. In addition, the City Engineer or City Real Property Agent is hereby authorized to quitclaim any easement that was granted without remuneration.

Sec. 23-131. Issuance of building permits for construction in setback areas, rights-of-way.

Except as herein specifically provided, no building permit shall be issued for construction of any structure in any building setback area or in the right-of-way of any mapped street, other than temporary structures such as walls, fences, signs or other easily removable structures costing less than five thousand dollars (\$5,000) except City streets which presently are of a width of eighty (80) feet shall be exempt from the provisions of this section if the circulation plan indicates those streets to be of a future width of eighty-four (84) feet.

Sec. 23-132. Authority to attach conditions to permit; notice required.

The City Engineer, or the City Council on appeal, may attach reasonable conditions to the decision to grant a building permit described in section 23-131, and the applicant shall be given written notice of the action.

Sec. 23-133. Effect of article.

This article shall not permit the construction, erection, placing or maintenance of any structure at any place where the same is prohibited by any other law, regulation or ordinance.

Sec. 23-134. Appeal.

Any applicant dissatisfied with any decision made in connection with the provisions of this article may appeal with a filing fee of one thousand two hundred ten dollars (\$1,210.00) to the planning commission. Such appeal shall be in writing and state the specific relief desired. The decision of the planning commission may be appealed to the City Council in accordance with section 2-31.

Secs. 23-135—23-139. Reserved.

SECTION 5. SEPARABILITY. If any sections, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion thereof.

SECTION 6. That all ordinances or parts of ordinances in conflict are repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.