

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: MARCH 4, 2009

**AGENDA ITEM  
E-7  
MARCH 11, 2009**

REVIEW REIMBURSEMENT AGREEMENT POLICY

**ITEM**

Review Reimbursement Agreement Policy and propose edits for consideration [PROVIDE POLICY GUIDANCE].

**BACKGROUND**

Director Winn requested that the District's Developer Reimbursement Policy be placed on a Board agenda for review. Attached is the District's Reimbursement Policy, Chapter 5.01 of the District's Code that was adopted by the Board as Ordinance 2008-107 on January 23, 2008.

**RECOMMENDATION**

Staff recommends that your Honorable Board review the reimbursement policy, propose edits, and direct staff to place this item on a future Board meeting agenda for consideration.

**ATTACHMENT**

- Reimbursement Agreement Ordinance 2008-107

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**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2008-107**

**AN ORDINANCE OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING CHAPTER 5.01 OF THE DISTRICT CODE  
REGARDING REIMBURSEMENT AGREEMENTS**

**WHEREAS**, pursuant to § 66485 et seq. of the Government Code, the Nipomo Community Services District ("District") may impose by Local Ordinance a requirement that improvements installed by a subdivider for the benefit of the subdivision shall contain supplemental size, capacity, number or length for the benefit of property not within the subdivision, and those improvements be dedicated to the District, and thereon enter into an agreement with the subdivider to reimburse the subdivider for that portion of the costs of those improvements, including an amount attributed to interest, in excess of the construction required for the subdivision; and

**WHEREAS**, based on the Staff Report, Staff presentation, and public comment, the District Board of Directors finds:

- A. That the purpose of this Ordinance is compliant with §66485 et seq. of the Government Code; and
- B. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code §54954.2 (the Brown Act).

**NOW, THEREFORE BE IT ORDAINED**, by the District Board of Directors as follows:

**Section 1. Amendment of Chapter 5.01 of the District Code**

Chapter 5.01 of the District Code, as amended and attached hereto as Exhibit "1" and incorporated herein by this reference, is hereby approved and adopted by the District Board of Directors.

**Section 2. Incorporation of Recitals**

The recitals to this Ordinance are true and correct and are incorporated herein by reference.

**Section 3. Severability**

If any section, subsection, sentence, clause or phrase of this Ordinance (including Chapter 5.01) 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 or Chapter 5.01. The Governing Board of the District hereby declares that it would have passed this Ordinance adopting Chapter 5.01 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.

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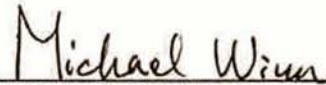
**Section 4. Inconsistency**

To the extent that the terms of provision of this Ordinance, including Exhibit "1", may be inconsistent or in conflict with the terms or conditions of any prior District Ordinance(s), Motions, Resolutions, Rules, or Regulations adopted by the District, governing the same subject matter thereof, then such inconsistent and conflicting provisions of prior Ordinances, Motions, Resolutions, Rules, and Regulations are hereby repealed.

**Section 5. Effective Date.** This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the fifteenth (15<sup>th</sup>) day after passage it shall be published once 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 an adjourned regular meeting of the Board of Directors held on January 16, 2008, and passed and adopted by the District Board of Directors on the 23<sup>rd</sup> day of January, 2008, by the following roll call vote to wit:

AYES: Directors Harrison, Vierheilig, Trotter, Eby and Winn  
NOES: None  
ABSENT: None  
ABSTAINING: None

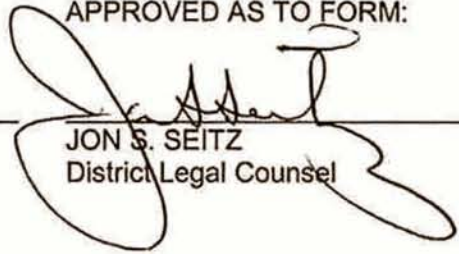


MICHAEL WINN,  
President of the Board of Directors  
Nipomo Community Services District

ATTEST:

  
DONNA K. JOHNSON  
Secretary to the Board

APPROVED AS TO FORM:

  
JON S. SEITZ  
District Legal Counsel

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Title 5 SEWER AND WATER MAIN EXTENSIONS AND  
APPURTENANT FACILITIES  
Chapter 5.01 REIMBURSEMENT AGREEMENTS

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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. 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.
- C. 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.

5.01.020 Definitions.

As used in this chapter the following words shall have the following meanings:

**"Applicant"** means sub-divider, developer, owner and/or builder.

**"District"** means the Nipomo Community Services District.

**"District Facility(ies)"** or "project" means water lines, water production facilities, sewer mains, sewer lift stations and appurtenant facilities that are dedicated and accepted by the District.

**"Engineer"** means District Engineer.

5.01.030 Reimbursement of excess costs.

- A. Excess costs means:
  - 1. Oversizing: The cost of installing the size of line required to serve Applicant's needs pursuant to District's plans and specifications or as identified in the Engineer's Report and the actual cost of installing a larger line at the direction of the District.

Title 5 SEWER AND WATER MAIN EXTENSIONS AND  
APPURTENANT FACILITIES  
Chapter 5.01 REIMBURSEMENT AGREEMENTS

2. Off-site development: A pro rata share of the costs of installing District Facilities and appurtenances pursuant to District plans and specifications beyond the property of the Applicant that are subject to probable future use by connectors other than Applicant.
- B. Allowable Costs: Costs which are allowable for inclusion in the calculation of excess costs are those costs which are directly related to the planning, design and construction of the District Facility, including payments to contractors and engineers, security bonds, acquiring right-of-way for the project, and amounts attributable to interest for the excess cost of oversizing the District Facilities .
  - C. Ineligible Costs: Ineligible costs include, but are not limited to, attorneys' fees, financing costs, and the Applicant's overhead and office expenses related to the coordination and supervision of contractors engaged to perform project work.
  - D. Maximum Recovery: The maximum recovery of costs for installation of a District facility will be calculated as the sum of all allowable costs of the District Facility, less the share of costs for the Applicant's use of the District Facility based upon the number of Applicant's connections or residential units equivalent as determined by the Engineer. The Applicant's maximum recovery shall also be reduced by the sum of all reimbursement fees waived by the Applicant pursuant to Agreements regarding the share of costs between the Applicant and other party or parties.
  - E. Approval of Excess Costs: District shall have the right to audit the excess costs submitted by Applicant, and to approve for reimbursement only so much thereof it determines to be just and reasonable. Such excess cost, if any, shall be computed when such facilities are completed by Applicant and accepted by District, and such shall be paid as provided in a reimbursement agreement.
  - F. Proration of Costs:
    1. The Engineer shall prorate the approved excess costs against all lots or parcels which in the future may be served by direct connection thereto ("Area of Proration"). The District shall send written notice of the prorated amount to the person shown on the latest County Assessor's roll as the owner or agent of record for assessment purposes for each parcel. Such person may protest the prorations in writing within fourteen days after the notice is mailed. If not protested within the fourteen days, the proration shall become final for the purposes of this section.
    2. A protest shall be concerned only with the division or spread of the costs between or among the Applicant's property(ies) and all other properties to be included in the Area of Proration or the boundary of the Area of Proration. A protest shall not be concerned with the actual construction costs unless the

Title 5 SEWER AND WATER MAIN EXTENSIONS AND  
APPURTENANT FACILITIES  
Chapter 5.01 REIMBURSEMENT AGREEMENTS

protester can demonstrate fraud or willful concealment of actual cost information as presented by the Applicant or his agent to the Engineer.

3. The District's Board of Directors shall hold a public hearing to consider all such written protests. All evidence in support of the protest shall be submitted in writing to the District at least ten days before the meeting. The Engineer shall prepare a written report and recommendation to the board on each protest. A copy of the Engineer's report shall be mailed, or otherwise delivered, to the concerned protester at least five days before the board meeting to consider the protest.
  4. The Board's decision on the protest shall be in writing, and shall be final. If the Board's decision results in an increased proration amount for properties owned by anyone other than the protester or the Applicant, a new notice and a new fourteen-day period shall be given for each such property.
  5. If no protest is filed for a property within the fourteen-day period after the first or any subsequent notice of prorated amount is mailed for that property, the proration shall become final as to the property.
- G. The Area of Proration and the final proration of costs shall be approved by Resolution of the District.
- H. The District General Manager is authorized to record a Notice on all properties that are subject to reimbursement upon adoption of the Resolution referenced in subparagraph F, above.

5.01.031 Applications for Reimbursement.

- A. In order to qualify for reimbursement of excess costs, pursuant to this chapter, Applicant shall, within ninety days of District's acceptance of District Facilities, deliver to District the following:
1. Written application requesting reimbursement of excess costs;
  2. A certified statement showing the Applicant's allowable costs in constructing District Facilities.
  3. A scale map that identifies the District Facilities and parcels which could reasonably be physically connected directly to the District Facility(ies).
  4. A list of each owner's name, address, county assessor's parcel number and current zoning for each parcel identified on the scale map referenced in subparagraph 3 above.

Title 5 SEWER AND WATER MAIN EXTENSIONS AND  
APPURTENANT FACILITIES  
Chapter 5.01 REIMBURSEMENT AGREEMENTS

5. A statement disclosing any agreements regarding the sharing of the District Facility costs which exist between the Applicant and any other party or parties.

B. The Applicant shall provide other information requested by the District Engineer and shall cooperate with the Engineer in reviewing costs.

C. If Applicant does not submit the application and information required in subparagraph A, above, within ninety days of District's acceptance of the District Facility (ies), Applicant shall have waived all right to reimbursement.

5.01.035 Reimbursement Agreement

A. Upon the Applicant complying with 5.01.031, the District shall enter into a Reimbursement Agreement that is consistent with this Chapter.

B. The Reimbursement Agreement shall require Applicant to reimburse the District's costs in processing the application for reimbursement.

5.01.040 Ten-year repayment obligation.

Provided that Applicant has complied with all provisions of this Chapter and the District has adopted a final Resolution pursuant to 5.01.030 (F), for a period of ten years from the date of acceptance of the District Facilities, the Applicant shall be eligible for reimbursement as provided in the Reimbursement Agreement from each parcel as the parcel, or portion thereof, connects to the District Facility(ies).

5.01.050 District to serve as collection agency.

The District shall collect the prorated amount for each parcel before permitting the parcel to connect to the District Facility. It is the duty of the Applicant to keep a current address on file with the District. Reimbursement amounts returned to the District and unclaimed within one year thereafter shall become the property of the District.

5.01.060 District administrative costs.

As partial reimbursement to the District for its administrative costs in record keeping, collection and disbursement activities, the District shall charge, deduct and retain five percent (5%) of all reimbursement amounts collected from subsequent connections to District Facilities .

5.01.070 District connections.

A. The District may make connections to the water and sewer Facilities to serve public facilities that are outside the Area of Proration, without any obligation to pay

Title 5 SEWER AND WATER MAIN EXTENSIONS AND  
APPURTENANT FACILITIES  
Chapter 5.01 REIMBURSEMENT AGREEMENTS

any such reimbursement, upon a determination that there is sufficient capacity in the District Facility to serve the Area of Proration and the public facilities .

B. The District may also make or permit connections to the Facilities to serve private property outside of the area of proration as determined by the Engineer; provided, however, that the District Board reserves the right to determine at that time whether or not the owners of such private property shall be obligated to reimburse Applicant as provided in this chapter.

5.01.080 All other District water and sewer charges in effect.

Nothing herein shall be construed or applied to affect or reduce any other District charges, fees, connections or other amounts payable to the District for water and sewer service.

5.01.090 District liability.

If for any reason the reimbursable cost is or becomes uncollectible, as determined by the District, the District shall not be liable to the Applicant for the excess costs in constructing the District Facilities.