

ORDINANCE NO. 60

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
WILDOMAR, CALIFORNIA, AMENDING SECTIONS 16.60.010,
16.60.020, AND ADDING A NEW 16.60.030 OF THE
WILDOMAR MUNICIPAL CODE RELATING TO SECURITY FOR
SUBDIVISION IMPROVEMENT AGREEMENTS**

**THE CITY COUNCIL OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. ENVIRONMENTAL FINDINGS. The City Council hereby finds and determines that the project consists of a subdivision ordinance amendment related to implementation of the Subdivision Map Act and has no potential to impact the environment. The proposed ordinance does not alter the existing requirements that specific development projects comply with the provisions of the California Environmental Quality Act. Consequently, the proposed ordinance is exempt from CEQA review pursuant to Section 15061(b)(3) which states that if an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 2. Ordinance Amendment. Section 16.60.010.C is hereby amended to read as follows:

“C. The original period of the agreement and security shall be 24 months. Extensions of time may be granted at any time by the City Manager only upon terms and conditions approved by the City Council either at its own option, with or without notice to the land divider and surety, or at the written request of the land divider, with or without notice to the surety. Each extension shall be for a period not to exceed one year. In addition to the above, and as a further condition to granting an extension of time, the City Engineer may require additional agreements or security as necessary to guarantee the completion of the improvements.”

SECTION 3. Ordinance Amendment. Section 16.60.020.C of the Wildomar Municipal Code is hereby amended to read as follows:

“C. Acceptable forms of security for taxes shall be as provided in Section 16.60.010A for security for improvement; provided, however, that a cash bond shall be required to guarantee the payment of taxes in amounts less than \$2,500.00. The forms of security offered shall not have an expiration date prior to that of the expiration of the map.”

SECTION 4. Addition of New Section. A new section 16.60.030 is added to the Wildomar Municipal Code to read as follows:

“16.60.030 LIEN AGREEMENT AS SECURITY

- A. The land divider may, in lieu of posting a security described in Section 16.60.010, enter into an agreement with the City to construct the required improvements in the future, securing such performance by granting the City a lien on the real property to be divided. Such agreements shall be known as ‘lien agreements.’ The use of lien agreements shall only be allowed if all requirements of this Section are satisfied.
- B. Government Code section 66499(a)(4) authorizes the City to enter into lien agreements if it is found by the City that it would not be in the public interest to require the installation of the required improvements sooner than two years after the recordation of the map.
- C. Where the City finds that it would not be in the public interest to require that installation of the required improvements occur sooner than two years after recordation of the map, the land divider may execute a lien agreement with the City at the time the land divider enters into an agreement with the City to construct required improvements pursuant to Section 16.60.030.
- D. A lien agreement may be used to substitute for an existing security which was furnished under Section 16.60.010; provided, however, that use of a lien agreement as substitution for an existing security shall be at the City's sole discretion. The City will not accept a lien agreement from any land divider, either at the time of execution of the agreement to construct improvements, or as a substitute for existing security, if any individual lots have been sold, if any construction permits, including but not limited to any grading or building permits, have been issued on any of the property, or if construction of any of the required improvements has begun. Notwithstanding the above, the City may accept a lien agreement from any land divider as a substitute for existing security if grading has commenced on the land to be divided so long as the grading is in strict accordance with a valid grading permit and all the following are met:
 - 1. There is no need for the City to construct the required improvements if the land divider's project is abandoned or delayed for any period of time or for any other reason;
 - 2. The grading has no effect on the use, operation and maintenance of existing streets or highways, public or private;
 - 3. The grading has not caused the modification or closure of any public access points, existing streets or highways, public or private;
 - 4. Additional drainage improvement and/or erosion controls are not necessary and/or installed in the road right-of-way due to the grading;
 - 5. Delay of the construction of the land divider's required improvements does not affect or delay the improvements of an adjacent land divider who had already commenced work on his or her required improvements.

6. The land is fully in compliance with storm water quality requirements and has established a program for maintenance of such requirements.

E. Lien agreements shall:

1. Be allowed only for Schedule "A", "B", and "E" maps.
2. Be allowed only where the land divider provides a title insurance policy and current title report from a title company approved by the City that documents that the land divider is the record owner of the real property to be divided and that the real property to be divided is not subject to any mortgages, deeds of trust, or judgment liens. The title insurance policy and title report shall be issued within the 60 days prior to the execution of the lien agreement.
3. Be in a form acceptable to and approved by City Attorney
4. Be used to secure future improvements that would be required for Schedule "A", "B", and "E" maps.
5. Be used only when a land divider would be required by Section 16.60.030 to construct or agree to construct the required improvements.
6. Contain an itemization of the required improvements and an estimate of costs approved by the City Engineer and shall specify that the land divider's or subsequent owner's obligation extends to the actual cost of construction of the required improvements if such costs exceed the estimate.
7. Be recorded with the County Recorder. The recorded lien agreement shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the County.
8. Be approved concurrently with the approval of the subdivision improvement agreement and the final map with a note of the lien agreements existence placed on the map, except where the lien agreement is being substituted after final map approval for other security previously deposited pursuant to Section 16.60.010 in which case the lien agreement shall be signed and acknowledged by all parties having any record title interest in the property, as prescribed by Government Code Section 66436, consenting to the subordination of their interests to the lien agreement.

F. From the time of recordation of the lien agreement, a lien shall attach to the property and shall have the priority of a judgment lien in an amount necessary to complete the required improvements. Under no circumstances shall the City agree to subordinate the lien.

G. The lien agreement shall provide that the land divider shall substitute acceptable security for the lien agreement and commence to construct the improvements required pursuant to Section 16.60.030 within three years following recordation of the map, or in the case of a lien agreement which has been substituted for existing security pursuant to Section 16.60.010 within three years following recordation of the lien agreement.

- H. The time for substitution of acceptable security and commencement of construction of the required improvements in Subsection G above, may be extended up to three times, by the City Manager only upon forms and terms approved by the City Council. Each extension shall be for a period not to exceed one year. However, the City Council may grant additional time extensions, as it deems appropriate, for substitution of acceptable security and commencement of construction of the required improvements pursuant to agreements secured either by (i) lien agreements executed at the time of recordation of the map, or (ii) lien agreements substituted for an existing security furnished under Section 16.60.010. For each extension of time under this subsection, the land divider shall provide a title insurance policy and current title report from a title company approved by the City that the documents that the land divider is the record owner of the real property to be divided and the real property to be divided is not subject to any mortgages, deeds to trust, or judgment liens. The title insurance policy and title report shall be issued within the 60 days prior to request for an extension of time.
- I. No individual lots may be sold while the lien agreement is in place. However, fee title to the entire property encumbered by the lien agreement or to all lots designated on any individual final map which is encumbered by the lien agreement, may be sold in the aggregate to a single purchaser, provided that the proposed purchaser shall, prior to assuming title to the property, execute a new subdivision improvement agreement, and either (i) execute a new lien agreement in a form acceptable to the City which will encumber the property to be conveyed, specifying the respective obligations of the owner of property subject to the original and new lien agreement, or (ii) provide acceptable alternative security for the required improvements to be constructed as a condition to development of the property conveyed, pursuant to Section 16.60.010. Any new lien agreement must require that acceptable security be substituted therefore, and the improvements be substituted therefore, and the improvements secured thereby commenced by the same date provided in the lien agreement with the original owner, unless such date shall be extended by the City Council as provided in subsection H above.
- J. At the time the City Council approves a lien agreement, the land divider shall provide a cash deposit in the amount of \$12,000.00 to the City for the purpose of reverting the property to acreage if the land divider breaches the terms of the lien agreement. In addition, at such time as title to any property subject to a lien agreement shall be conveyed, the transferee thereof, if such transferee executes a new lien agreement to secure construction of the improvements imposed upon such property as described in Subsection I above, shall provide a substitute cash deposit in the amount of \$12,000.00 to the City for the purpose of reverting the property to acreage if the land divider breaches the terms of the lien agreement. Any unused portion of any such deposit shall be refunded to the land divider following completion of such reversion. If the cost of reverting the property to acreage exceed \$12,000.00, the land divider shall pay such additional costs to the City prior to recordation of the reversion to acreage map.

- K. The lien agreement shall only be released upon substitution of acceptable security for the lien agreement under Section 16.60.010 in order to begin construction of the required improvements, or upon recordation of a reversion to acreage map.
- L. In no instance shall the lien agreement compel the City to construct the required improvements.”

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 6. Effective Date. This ordinance shall take effect thirty (30) days after its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ENACTED this 24th day of February, 2011.



Marsha Swanson
Mayor

APPROVED AS TO FORM:

ATTEST:



Julie Hayward Biggs
City Attorney
By: Thomas Jex
Assistant City Attorney



Debbie A. Lee, CMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, Debbie A. Lee, CMC, City Clerk of the City of Wildomar, California, do hereby certify that the foregoing Ordinance No. 60 was introduced at a special meeting of the City Council of the City of Wildomar, California, on January 25, 2011, and was duly adopted at an adjourned regular meeting held on February 24, 2011, by the City Council of the City of Wildomar, California, by the following vote:

AYES: Mayor Swanson, Mayor Pro Tem Benoit, Council Members Cashman, Moore, Walker

NOES: None

ABSTAIN: None

ABSENT: None



Debbie A. Lee, CMC
City Clerk
City of Wildomar