

Richard Colwell County Recorder, YUMA County AZ



WHEN RECORDED, MAIL TO:

**CITY OF SAN LUIS
ATTN: CITY CLERK
P.O. BOX 1170
SAN LUIS, ARIZONA 85349**

The above area is to be reserved for recording information

CAPTION HEADING:

ORDINANCE

Ordinance No. 429 – Amending the San Luis City Code, Chapter 150 Building Regulations to amend Subsection 150.10.130 (C) and add subsection (E) to Section 15.10.130 additional regulations.



Ordinance

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 429

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AMENDING THE SAN LUIS CITY CODE, CHAPTER 150 BUILDING REGULATIONS TO AMEND SUBSECTION 150.10.130 (C) AND ADD SUBSECTION (E) TO SECTION 15.10.130 ADDITIONAL REGULATIONS; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY.

WHEREAS, it is the policy of the City of San Luis, Arizona ("City") that owners of property be required to develop streets and sidewalks and related utility infrastructure adjacent to their property; and

WHEREAS, A.R.S. § 9-243 provides that a city may require a property owner to construct sidewalks and streets adjacent to their property, and if these improvements are developed at the city's expense, the city may recover its expenses by an assessment against the property and may provide and approve the manner of assessment; and

WHEREAS, the City Council wishes to reserve the right to make payback agreements with special provisions that may differ from the provisions of Subsection 150.10.130 (C) of the City Code;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of San Luis, Arizona, as follows:

Section 1: The beginning paragraph of subsection 150.10.130 (C) is hereby amended to read as follows:

(C) *Payback Agreements.* For all payback agreements and development agreements with payback provisions entered prior to December 1, 2020, said agreements will be carried out according to their terms. For all such agreements that have not established either a benefit area, amount of expense, allocation of expense, or method of collection and payment of payback monies, the Public Works Director, in his sole discretion, will make such determinations. Subsection (C)(4)(j) of this section shall apply to any legal challenge to any matter regarding a payback agreement or development agreement with payback provisions, including, but not limited

to, matters related to benefit area, amount of expense, allocation of expense, or method of collection and payback of payback monies, regardless of the date said agreement was entered. Unless special provisions are approved by Council, for all agreements made on or after December 1, 2020, the following provisions will apply:

Section 2: All remaining provisions of Subsection 150.10.130 (C) shall remain in full force and effect.

Section 3: Section 15.10.130 Additional Regulations of Chapter 150 Building Regulations of the City Code of the City of San Luis, Arizona is hereby amended to add Subsection 15.10.130 (E) to read as follows:

(E) *City Recovery of Roadway and Sidewalk Expense.*

(1) Pursuant to the authority of A.R.S. § 9-243, owners of property within the City are required to construct streets and sidewalks within and adjacent to the property as a requirement of the issuance of any permit or regulatory approval by the City. The City Council reserves the right to waive this requirement with respect to any particular development.

(2) In the event the City determines the streets are necessary before the development of the property, the City may construct street and/or sidewalk improvements, including needed or necessary utility infrastructure (hereinafter "Roadway Infrastructure"), and recover any costs construction and development of such streets, roads, and related utility infrastructure, the cost of acquisition of right of way, including the cost of acquisition as determined in proceedings in eminent domain, as well as all costs associated with acquisition including costs for expert witnesses, title reports, court costs and attorney's fees (hereinafter "Costs of Roadway Infrastructure"). The City may elect to acquire the right of way and recover its acquisition costs as delineated herein for the purpose of future street, sidewalk, and utility development without presently constructing infrastructure.

(3) In the event the City develops Roadway Infrastructure or incurs Costs of Roadway Infrastructure as provided in Subsection 15.10.130(D)(2), the City shall be entitled to recover its costs as provided below.

(4) The benefit area shall be all property adjacent to the Roadway Infrastructure project. The City shall prepare a diagram of all property that is adjacent to the Roadway Infrastructure project

and prepare an engineer's cost estimate for the Roadway Infrastructure Project.

(5) The Costs of Roadway Infrastructure shall be incurred pursuant to the City's purchasing policies.

(6) The Public Works Director shall notify all adjacent property owners (according to the Records of the Yuma County Recorder) of property for which an assessment for the purposes of recovery of Costs of Roadway Infrastructure is proposed before construction begins. The Public Works Director shall send the above notification by certified or registered mail and shall include that construction of Roadway Infrastructure will occur. An amount may be assessed to each adjacent benefitting parcel that will be recorded with the Yuma County Recorder upon the project completion. This initial notification to each adjacent benefitting parcel shall include the following:

(a) A letter explaining the Roadway Infrastructure Project and the proposed assessment for purposes of recovery of Costs of Roadway Infrastructure.

(b) Information on the benefitting parcels and the respective costs of the future reimbursement based on the engineer's cost estimate for the proposed Roadway Infrastructure Project and any proposed cost allocation if the development involves multiple parcels of property.

(c) The notice shall contain the address and identification of a person or position designated by the Public Works Department to receive requests for a hearing. If the property owner of a benefitting adjacent parcel objects to either the cost allocation or any other procedural aspect of the Roadway Infrastructure project or the proposed assessment of costs, the property owner must submit a written request for a hearing to the Public Works Department within thirty (30) days of the date of mailing the notice.

(d) If the Public Works Department receives no request for a hearing within the time allowed, the Department may accept the proposed Roadway infrastructure Project and cost allocation as final.

(e) If a request for hearing is received from one or more affected property owners, the Department shall set the

date, time, and location of an administrative hearing on the proposed agreement. The City shall provide all affected property owners with notice of the hearing.

(f) The Public Works Director will hold an administrative hearing at the stated date and time to establish each benefitting property's share in the cost of the improvements associated with the proposed Roadway Infrastructure project. Any affected property owner may appear and be heard at the hearing. At the conclusion of the hearing, the Director may accept the allocation of Roadway Infrastructure Costs as proposed or modify the allocation of percentages based on information received at the hearing. The Director shall issue a written decision within ten (10) business days of the conclusion of the hearing, and a copy shall be mailed or emailed if requested to each affected property owner. The Director may appoint a civil engineer, who is experienced in municipal infrastructure, to be the hearing officer conducting said hearing and issuing the decision.

(g) Any affected property owner who appears at the hearing may appeal the determination of the Public Works Director (or the designated hearing officer) to the City Manager by submitting a notice of appeal to the Public Works Director within ten (10) business days of the date of the issuance of a written decision. The City Manager may review the decision based on information and testimony submitted at the hearing or may accept any additional information or testimony in the City Manager's discretion. If a notice of appeal is not timely submitted, the decision shall become final. If an appeal is timely submitted, the decision of the City Manager on appeal shall be final.

(h) Once a decision is final, the Public Works Department shall use the results to determine the maximum reimbursement amount to be included in any assessment made to recover the Costs of Roadway Infrastructure.

(7) The City will prepare an appropriate notice of assessment to recover Costs of Roadway Infrastructure and the amount assigned to each benefited adjacent property and have notice of each recorded with the Yuma County Recorder.

(8) For any legal challenge to a decision of the Public

Works Director, the City shall have the burden to show by a preponderance of the evidence that a reasonable basis exists to support the decision. Upon such a finding, the decision shall be affirmed unless it is shown to be arbitrary or capricious.

(9) Any assessment providing for reimbursement of the City shall run for twenty (20) years after the date of completion of Roadway Infrastructure or, in the case of acquisition of right of way for the purpose of future Roadway Infrastructure without present construction of Roadway Infrastructure, completion of acquisition or completion of proceedings in eminent domain, whichever is later in time. At the end of the maximum period, as determined by the City, all assessments pursuant to this subsection shall terminate.

(10) Payback charges shall include a maximum simple interest rate equal to one (1) percent plus the prime rate, as published by the board of governors of the Federal Reserve System, per month, or any portion thereof, from the date of completion of Roadway Infrastructure or, in the case of acquisition of right of way for the purpose of future Roadway Infrastructure without present construction of Roadway Infrastructure, completion of acquisition or completion of proceedings in eminent domain, whichever is later in time. This rate shall not change for the life of the reimbursement requirement. Provided, however, any affected property owner who elects to pay the entire amount charged to such owner's parcel within sixty (60) days of the recording of the notice of assessment shall not be required to pay any interest.

(11) For land, and any part thereof, which is the subject of an assessment for reimbursement of city expenditures, the required assessment charge, including all costs and interest, shall be paid to the City prior to:

(a) The issuance of a permit authorizing connection to the public water or public sewer system.

(b) The extension of water or sewer service;

(c) The issuance of any building permit;

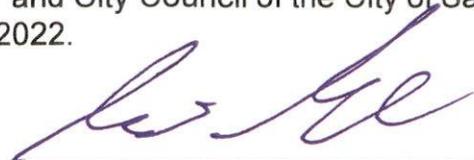
(d) The processing of any request for rezoning, variance, or conditional use permit.

(e) The processing of any request for lot split or subdivision of land.

Section 4: In the event of a conflict between the provisions of this ordinance and any other ordinance, code, resolution, order, regulation, or policy of the City of San Luis, the conflicting provisions are repealed, superseded, and replaced; and the provisions of this ordinance shall govern.

Section 5: If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

PASSED, ADOPTED, and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this 24th day of August 2022.



Gerardo Sanchez, Mayor

ATTEST:

APPROVED AS TO FORM:

for M. Hernandez, Deputy City Clerk
Sonia Cornelio, City Clerk

Kay Marion Macuil
Kay Marion Macuil, City Attorney