

HEBER PUBLIC UTILITY DISTRICT

REPORT TO BOARD OF DIRECTORS

MEETING DATE: March 20, 2014

FROM: Laura Fischer, General Manager

SUBJECT: Approve Resolution 2014-2 to adopt Ordinance 2014-1 establishing a cost recovery method for service costs of new development within the District service area.

ISSUE: Shall the Board adopt Ordinance 2014-1 establishing a cost recovery method for service costs of new development within the District service area via adoption of Resolution 2014-2?

General Manager's Recommendation:

Adopt Resolution 2014-2 to adopt Ordinance 2014-1.

FISCAL IMPACT:

NONE. After adoption the implementation of the Ordinance will ensure HPUD recovers costs associated with providing services.

BACKGROUND:

At the January 15, 2014 meeting, the Board adopted Resolution number 2014-1 stating the intent to adopt an Ordinance to establish a cost recovery Ordinance that will ensure adequate mitigation of all impacts on or to the level of service and or capacity of the District.

At the February 20, 2014 meeting, the Board waived the first reading of Ordinance 2014-1 and approved the Ordinance as written. No changes were recommended or made to the document as presented on February 20, 2014.

DISCUSSION:

Adoption of Resolution 2014-2 will approve the Ordinance as presented to you at your last meeting. The next step in the approval and implementation of the Ordinance is to publish a summary then after 30 days the Ordinance will be in effect.

CONCLUSION:

In order to recover cost to the District that would otherwise not be recovered, it is recommended that the Board adopt Ordinance 2014-1 via adoption of Resolution 2014-2.

Respectfully Submitted,

Laura Fischer, General Manager

Attachments: Ordinance 2014-1
Resolution 2014-2

RESOLUTION NO. 2014-2_

**A RESOLUTION OF THE HEBER PUBLIC UTILITY DISTRICT
ADOPTING ORDINANCE NUMBER 2014-1 ESTABLISHING A
COST RECOVERY METHOD FOR SERVICE COSTS OF NEW
DEVELOPMENT WITHIN THE DISTRICT SERVICE AREA**

WHEREAS, the Heber Public Utility District (HPUD) Board of Directors is charged with the responsibility of establishing Ordinances to guide the various functions of the HPUD and, where necessary, to establish methods by which costs for services are to be recovered, and;

WHEREAS, the Board of Directors from time to time adopts Ordinances pertaining to providing new services to development within the service area and/or sphere of influence, and;

WHEREAS, the Board of Directors from time to time adopts Ordinances pertaining to recovering costs associated with providing new services to development within the service area and/or sphere of influence, and;

WHEREAS, the HPUD Board of Directors expects these Ordinances, once adopted, to provide method to recover costs to the HPUD Board of Directors, HPUD staff and other public agencies, and that such Ordinances state the intent of the HPUD and are intended to be rules for conducting of the HPUD business; and;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of Heber Public Utilities District as follows:

1. That the foregoing is true, correct and adopted.
2. That the HPUD Board of Directors hereby adopts Ordinance 2014-1 An Ordinance of the Heber Public Utility District Establishing a Cost Recovery Method For Service Costs of New Development Within The District Service Area.
3. That all actions by the Board of Directors of the Heber Public Utilities District heretofore taken pertaining to the subjects covered in the Ordinance 2014-1 are hereby repealed.

APPROVE AS TO FORM:

Steven M. Walker, General Counsel

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
HEBER PUBLIC UTILITY DISTRICT)

AYES: _____

NOES: _____

ABSENT: _____

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Heber Public Utility District held on the 20th day of March 2014.

Margarita K. Lizarraga, Board President

ATTEST:

I, Rafaela Sanchez, Secretary to the Clerk of the Board of the Heber Public Utility District, County of Imperial, State of California, DO HEREBY CERTIFY that the foregoing resolution was dully passed, approved and adopted by the Board of Directors of the Heber Public Utility District at its regularly scheduled meeting held on the 20th day of March 2014.

By _____
Rafaela Sanchez, Clerk of the Board

ORDINANCE 2014-1

AN ORDINANCE OF THE HEBER PUBLIC UTILITY DISTRICT ESTABLISHING A COST RECOVERY METHOD FOR SERVICE COSTS OF NEW DEVELOPMENT WITHIN THE DISTRICT SERVICE AREA

SECTION 1: Background. The Heber Public Utility District (HPUD) is authorized by the Imperial County Local Agency Formation Commission to operate and extend services within its District boundary for street lighting, recreational parks, storm-water facilities (including retention/detention basins), solid waste, and water and sewer services. The District also has a mutual agreement with the County of Imperial to provide street lighting maintenance and operation, fire hydrant maintenance and replacement, and perform mosquito abatement, into portions of its assessment areas.

SECTION 2: Purpose. New development within the HPUD and/or Sphere of Influence results in the need to extend the delivery of the aforementioned services and results in cost impacts to the District for administration, service delivery, labor, equipment and material. The HPUD believes it is the developer's responsibility to mitigate for the reasonable cost of delivering the aforementioned services as further described in this Ordinance.

SECTION 3: Service Applicability. This Ordinance will be applicable to all new development that requires the extension of any services under the District's service area such as services related to park facilities, retention/detention basin facilities, street lighting, fire hydrants, water facilities and wastewater facilities. No single service shall be extended by the District unless all services have been satisfactorily mitigated. Applicable services for cost recovery shall be determined as follows and only upon acceptance of an approved facility:

- A) Park & Recreation Services-** The developer shall be responsible for the installation and construction of any required park facilities as determined by the County of Imperial Development Standards. The HPUD shall extend parks and recreation services to new development if, and only when, an improved facility has been determined by the HPUD to be in compliance of the adopted standards and/or conditions of approval for the project and all other HPUD services have been satisfactorily mitigated.

Applicable recreational services are those necessary for the operation and maintenance of recreational facilities and amenities such as swings, slides, picnic tables, drinking fountains, restrooms, shade structures, and similar amenities for the use of the public. Recreational services may also include improved public open space areas for the purpose of recreational use.

- B) Storm-water Services-** The developer shall be responsible for the construction of any required retention/detention basin facilities and supporting systems as determined by the HPUD or the County of Imperial. Both detention and retention facilities shall be designed to the satisfaction of the HPUD Engineer and the Imperial County Public Works Department. The HPUD shall extend storm-water facility operation and maintenance services to new development if, and only when, an improved facility has been determined to be in compliance with the adopted standards, met the conditions of approval for the project, has been approved by the HPUD Engineer, and has satisfactorily mitigated all other HPUD services.

Applicable storm-water services are those specific to the operation and maintenance of detention basin facilities and retention basin facilities used for temporary storm-water

storage, and their supporting systems. The term “supporting systems” shall mean and include any pump station servicing a designated retention/detention basin, along with all drainage appurtenances (i.e. pipelines, inlet and outlet structures, and storm drains) handling storm water runoff from any of the affected parcels. Services associated with storm-water facilities also includes “**mosquito abatement**” that may be determined by the County Environmental Health Department to be required as a result of standing water accumulating in any retention/detention basin.

- C) **Street Lighting Services-** The developer shall be responsible for the construction of any required street and park lighting facilities and supporting systems as determined necessary by the County of Imperial and/or the Imperial Irrigation District. Street lighting services are those specific to the operation and maintenance of park lights and street lights and supporting systems such as poles, wires, bulbs and delivery of power. The HPUD shall extend lighting services to new development if, and only when, an improved lighting system has been determined by the HPUD to be in compliance of the adopted standards and/or conditions of approval for the project and all other HPUD services have been satisfactorily mitigated.
- D) **Fire Hydrant Services-** The developer shall be responsible for the construction and installation of any required fire hydrants and supporting systems as determined necessary by the County of Imperial Fire Department and adopted Codes. The HPUD shall extend fire hydrant maintenance and replacement services to new development if, and only when, the fire hydrants are within a public right-of-way, are determined to be in compliance with the adopted standards, and are consistent with the approved improvement plans. A written letter of adequacy will need to be issued by the County Fire Department. Fire hydrant services are restricted to and refer to the upright pipe with a nozzle or spout for drawing water from a water main to be used for fighting fires.
- E) **Solid Waste Service-** The developer shall be responsible to ensure that adequate solid waste containment areas are in place prior to initiating sold waste services through the HPUD. The HPUD Board of Directors has sole authority to select a purveyor for solid waste contract services including collection, transportation, recycling and disposal of solid waste, recyclable and compostable materials.
- F) **Water Services-** The developer shall be responsible for the construction of any required water facility improvements and supporting systems as determined necessary for the project by the HPUD. All water facilities shall be designed and constructed to the satisfaction of the HPUD Engineer. The HPUD shall extend water services to new development if, and only when, the water improvements have been determined to be in compliance with the conditions established by the HPUD Engineer and all other HPUD services have been satisfactorily mitigated.

Water services refers to potable water delivery and the operation and maintenance of the HPUD water system including water distribution pipelines, raw water and potable water storage facilities, water treatment plant facilities and supporting systems. Supporting water systems may include any pump stations, water storage tanks, and transmission pipelines necessary for the adequate conveyance of water.

- G) **Wastewater Services-** The developer shall be responsible for the construction of any required wastewater facility improvements and supporting systems as determined necessary for the project by the HPUD. All wastewater facilities shall be designed and constructed to the satisfaction of the HPUD Engineer. The HPUD shall extend sewer collection and treatment services to new development if, and only when, the wastewater improvements have been determined to be in compliance with the conditions established by the HPUD Engineer and all other HPUD services have been satisfactorily mitigated.

Wastewater services refers to the sewer collection and treatment services and the operation and maintenance of the HPUD wastewater treatment plant including the wastewater collection pipelines, treatment plant facilities and supporting systems. Supporting systems may include any lift stations and conveyance pipelines necessary for the adequate transmission of wastewater.

SECTION 4: Service Cost. The cost charged by the HPUD shall not exceed the reasonable cost of service. The operation, maintenance and service costs imposed for cost recovery in connection with the extension of new services shall be determined as follows:

- A) Park & Recreation Service Costs-** Service costs associated with an improved park or recreation facility that has been deemed acceptable by the HPUD, shall be recovered consistent with Section 5 of this Ordinance. Operation and maintenance costs that shall be recovered for park facilities and recreational services shall include, but not be limited to, administration time, labor, equipment costs, material, supplies, mileage/vehicle use, and any need for contract services. The cost of replacing amenities, over a minimum thirty (30) year period, shall also apply.
- B) Storm-water Service Costs-** Service costs associated with a retention/detention facility and supporting system that has been deemed acceptable by the HPUD, shall be recovered consistent with Section 5 of this Ordinance. Storm-water operation and maintenance costs that shall be recovered for retention/detention basin facilities shall include, but not be limited to, administration time, labor costs, equipment costs, material, supplies, mileage/vehicle use, engineering consultant costs and any other need for contract services including pest control services for “**mosquito abatement.**” Storm-water facilities that are constructed with pump stations shall have staff operational training costs recovered. Furthermore, the cost of replacing any pump system, over a minimum thirty (30) year period, shall also apply.
- C) Street Lighting Service Costs-** Service costs associated with an improved lighting system that has further been deemed acceptable by the HPUD, shall be recovered consistent with Section 5 of this Ordinance. Operation and Maintenance Costs that shall be recovered for street lighting services shall include, but not be limited to, administration time, equipment costs, material, supplies, mileage/vehicle use, and cost of power services and any repair fees incurred through the Imperial Irrigation District. The cost of replacing each light pole shall be applied at least once over a minimum thirty (30) year period.
- D) Fire Hydrant Service Costs-** Service costs associated with fire hydrant infrastructure, that has further been deemed acceptable by the County of Imperial Fire Department and that lies within a public right-of-way, shall be recovered consistent with Section 5 of this Ordinance. Operation and maintenance costs that shall be recovered for fire hydrant repair and/or replacement shall include, but not be limited to, administration time, equipment costs, material, supplies, and mileage/vehicle use. The cost of replacing each fire hydrant shall be applied at least once over a minimum thirty (30) year period.
- E) Solid Waste Costs-** Service costs associated with solid waste collection sub-contracted by the HPUD shall be recovered consistent with Section 5 of this Ordinance. Service costs that shall be recovered for solid waste collection include, but are not limited, administration time, collection, transportation, recycling and disposal services as contracted out by the HPUD.
- F) Water Service Costs-** Service costs associated with improved water facilities that have been constructed per the HPUD standards and deemed acceptable by the HPUD, shall be recovered consistent with Section 5 of this Ordinance. Operation and maintenance costs that shall be recovered for water services include, but are not limited to, administration time, engineering

fees, equipment costs, material, supplies, mileage/vehicle use, and cost of water supply through the Imperial Irrigation District and contract services as necessary. Water tanks and pump stations specific to new development shall require an additional operation and maintenance cost and shall be applied costs for full replacement, at least once over a minimum thirty (30) year period. Such pump stations shall further have staff operational training costs recovered.

- G) Wastewater Service Costs-** Service costs associated with improved wastewater facilities that have been constructed per the HPUD standards and deemed acceptable by the HPUD, shall be recovered consistent with Section 5 of this Ordinance. Operation and maintenance costs that shall be recovered for wastewater services include, but are not limited to, administration time, engineering fees, equipment costs, material, supplies, mileage/vehicle use, and cost of discharge of treated wastewater and contract services as necessary. Sewer lift stations specific to new development shall require an additional operation and maintenance cost and shall be applied costs for full replacement, at least once over a minimum thirty (30) year period. Such lift stations shall further have staff operational training costs recovered.

SECTION 5: Method of Recovery and Responsibility. The method of cost recovery shall be to the satisfaction of the HPUD and the financing mechanism shall be in place prior to the extension of any service by the HPUD and shall comply as follows:

- A. Park and Recreation Service Cost Recovery-** The developer shall not only be responsible for the cost of the construction of all park facilities and amenities but for securing a financing mechanism for costs associated with the ongoing operation and maintenance costs of the park and recreational facilities constructed. It shall be the responsibility of the developer and County of Imperial to determine a mechanism that will guarantee the collection of operation and maintenance costs of Park Facilities for perpetuity and for said funds to be transferred on a timely manner to the HPUD, lest the HPUD be absolved from park service responsibilities.

Any financing agreement shall incorporate language that nulls and voids the service agreement by the HPUD to provide services if the financing resources for the operation and maintenance of the respective park and recreation facilities were to terminate for whatever reason. The financing agreement for parks and recreational services shall further incorporate language that nulls and voids the service agreement by the HPUD to provide services if the subject park facilities are not deemed adequate because they either a) do not comply with the conditions of approval, b) do not meet the adopted County development standards, or c) are not per the approved plans. The HPUD shall not assume ownership of any recreational facilities that are substandard, do not comply with the conditions of approval, or that do not have an adequate and permanent tax allocation agreement from respective tax rate area.

The financing mechanism for park and recreational services shall be to the satisfaction of the HPUD and shall be in place prior to the extension of any service by the HPUD. Types of financing mechanisms for park and recreational services that may be acceptable to the HPUD are:

- 1) A tax assessment district if, and when, the constructed park and recreational facilities are tied to a residential subdivision with a minimum of thirty (30) residential lots, and stipulation that park services are contingent upon a successful tax assessment and that termination of tax fee constitutes termination of parks and recreation services through the HPUD.
- 2) A community facilities district (CFD) if, and when, there is stipulation incorporated that upon sunset of the community facilities district term, Imperial County, via property tax

collected from the subject tax rate area, will continue to finance the operation and maintenance costs of park facilities OR there is a stipulation in the community facilities district that park and recreation services delivery through the HPUD shall also sunset upon expiration of the community facilities district.

- 3) An adequate and permanent tax share agreement with Imperial County for a tax share allocation from the respective tax rate area to cover the costs of delivering ongoing operation and maintenance services for the approved and constructed park and recreation facilities and periodic replacement need of amenities.

B. Storm-water Service Cost Recovery- The developer shall be responsible for the construction of any required retention/detention basin facilities as determined by the HPUD or the County of Imperial. The developer shall further be responsible for securing the ongoing operation and maintenance costs of all storm-water facilities required for the proposed development. It shall be the responsibility of the developer and County of Imperial to determine a mechanism that will guarantee the collection of operation and maintenance costs of detention/retention basin facilities for perpetuity and for said funds to be transferred on a timely manner to the HPUD as service provider.

Any financing agreement for the provision of storm-water services shall incorporate language that nulls and voids the service agreement by the HPUD to provide operation and maintenance services if the subject retention/detention facilities are not deemed adequate because they either a) do not comply with the conditions of approval, b) do not meet the HPUD development standards and engineering requirements, or c) are not per the approved plans. The HPUD shall not assume ownership of any storm-water facilities that are substandard, do not comply with the conditions of approval, are not constructed per the approved plans or that do not have an adequate and permanent tax allocation agreement from respective tax rate area.

The financing mechanism for storm-water facilities shall be to the satisfaction of the HPUD and shall be in place prior to the extension of any service by the HPUD. Types of financing mechanisms for retention/detention facilities and supporting systems that may be acceptable to the HPUD are as follows:

- 1) A community facilities district if, and when, there is stipulation incorporated that upon sunset of the term Imperial County, via property tax collected from the subject tax rate area, will continue to finance the operation and maintenance costs of the retention/detention basin facilities and supporting systems OR there is a stipulation in the community facilities district that continuance of operation and maintenance services for the storm-water systems by the HPUD shall also sunset upon expiration of the community facilities district.
- 2) An adequate and permanent tax share agreement with Imperial County for a tax share allocation from the respective tax rate area to cover the costs of delivering ongoing operation and maintenance services for the approved and constructed storm-water facilities and eventual replacement of any support systems.

C. Lighting & Fire Hydrant Service Cost Recovery - The Developer shall install all new street lights and fire hydrants per the applicable County of Imperial Development Standards and within an Imperial County right-of-way. The developer shall further be responsible for securing the ongoing operation and maintenance costs of all lighting facilities and fire hydrants required for the respective development. It shall be the responsibility of the developer and County of Imperial to determine a mechanism that will guarantee the

collection of operation and maintenance costs for the perpetual operation and maintenance of lights and fire hydrants within public right-of-way or public property.

A financial assessment shall be prepared by the developer, to the satisfaction of the HPUD, of the annual cost to maintain street light and fire hydrant operation and maintenance services and their eventual replacement. It shall be the responsibility of the developer and County of Imperial to determine a mechanism that will guarantee the collection of street lighting power service and maintenance costs for both street lights and fire hydrants for perpetuity and that those funds collected will be transferred to the HPUD on a timely manner for the uninterrupted deliver of said services. The financing agreement shall incorporate language that nulls and voids the service agreement by the HPUD to provide services if the financing resources for the operation and maintenance of the lighting and hydrants were to terminate for whatever reason. The financing mechanism shall be in place prior to the extension of any service by the HPUD. Types of financing mechanisms for street lighting and hydrant facilities that may be acceptable to the HPUD are as follows:

- 1) An adequate and permanent tax share agreement with Imperial County for a tax share allocation from the respective tax rate area to cover the costs of street lighting and fire hydrant operation and maintenance services and eventual replacement needs.

- D. Mosquito Abatement Cost Recovery-** Mosquito abatement services as they pertain to areas within the HPUD service area refers to mosquito abatement that may be determined by the County Environmental Health Department to be required as a result of standing water accumulating in any retention/detention basin. The County of Imperial collects a County-wide mosquito abatement fee assessed per parcel of land to offset the costs of delivering mosquito abatement services. The HPUD will contact the mosquito complaint hot line whenever mosquito abatement is necessary and monitor conditions as necessary. The HPUD staff shall log and maintain records of abatement services provided by anyone other than Imperial County staff and shall submit an invoice to Imperial County for remittance.
- E. Solid Waste Service Cost Recovery-** The developer shall be responsible for ensuring that adequate solid waste containment areas are constructed prior to the HPUD initiating solid waste collection services. The HPUD outsources solid waste services and establishes solid waste collection fees based on contract costs. The HPUD has trash fees in place for the collection, transportation, recycling and disposal of solid waste, including recyclable materials. All new development is subject to the established solid waste collection fees.
- F. Water Service Cost Recovery-** The developer shall be responsible for the construction of any required water facility improvements as determined by the HPUD Engineer. The HPUD has in place capacity fees, service fees and operations and maintenance fees for those water improvements that have been found acceptable by the HPUD. All new development is subject to the established water service fees. The HPUD shall not assume service responsibility of any water facilities on private property unless written authorization has been issued to the developer by the HPUD Board of Directors and a corresponding public easement has been granted to the HPUD.
- G. Wastewater Service Cost Recovery--** The developer shall be responsible for the construction of any required wastewater facility improvements as determined by the HPUD Engineer. The HPUD has in place capacity fees, service fees and operations and maintenance fees for those wastewater improvements that have been found acceptable by the HPUD. All new development is subject to the established waste-water service fees. The HPUD shall not assume service responsibility of any wastewater facilities on private property unless written

authorization has been issued to the developer by the HPUD Board of Directors and a corresponding public easement has been granted to the HPUD.

SECTION 6: Service Commitment. Issuance of service commitments shall require a formal service request application from the developer/property owner. The HPUD shall process a service request application and provide the developer with information of service availability and capacities, of all services under the HPUD, for a proposed development project. This information will be provided in the form of a “Will Serve” letter. The “Will Serve” letter shall further outline the conditions under which the HPUD will provide services to a particular parcel(s) and shall contain, at minimum, the following information and conditions for services shall apply:

- A) The Will Serve letter shall state whether the HPUD provides services in the area and whether the subject parcel(s) are within the District boundary or sphere of influence and thus require annexation;
- B) The Will Serve letter shall state whether the HPUD has the capacity to provide the proposed project with the applicable service demands and shall communicate any applicable capacity fees and/or anticipated mitigation;
- C) The Will Serve letter shall stipulate that development impacts, to each and every service provided by the HPUD, shall be satisfactorily mitigated prior to any service extension;
- D) The Will Serve letter shall stipulate that long-term development impacts, such as the ongoing operation and maintenance of new facilities, shall require a long-term financing mechanism acceptable to the HPUD;

SECTION 7: Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

SECTION 8: Effective Date. This ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the District Board voting for and against the same.

NOW THEREFORE, it is the intent of the HPUD to establish specific conditions for approval of new development to ensure new service demand is mitigated as a whole, and to establish service policies, standards, and regulations that must be met prior to new service delivery, and may amend said policies and regulations from time to time in the interest of the public health, safety and welfare of the community, as follows:

- A) The HPUD is authorized, but not obligated, to extend services into areas that would otherwise be a County responsibility absent a financing agreement specific to new development;
- B) Sufficient and adequate funding, pursuant to this Ordinance, must exist for any new service HPUD proposes to provide to new development;
- C) A commitment to provide any HPUD service shall not be issued in the absence of adequate funding mechanism(s) to pay for all applicable HPUD services as a whole;

PASSED, APPROVED, AND ADOPTED this ___th day of March 2014.

Margie Lizarraga, Board President

Rafaela Sanchez, Board Secretary

I, Rafaela Sanchez, Secretary of Heber Public Utility District, DO HEREBY CERTIFY that the foregoing ordinance was duly passed, approved, and adopted by the Board of Directors at a regular meeting thereof held on the ___th of March 2014, and that the same was approved by the Director of said Board on said date, and that the same was adopted by the following roll call vote:

AYES:

NOES:

ABSENT: