

ORDINANCE NO. 10906

AN ORDINANCE ESTABLISHING MUNICIPAL CODE CHAPTER 14.02 TO CREATE A PROCEDURE FOR REIMBURSEMENT FOR THE COST OF PRIVATE CONSTRUCTION OF PUBLIC STREETS AND PUBLIC UTILITIES THAT BENEFIT OTHERS.

**WHEREAS**, RCW Chapter 35.91 authorizes cities to provide a mechanism for reimbursement of owners for public works projects consisting of sanitary sewer, storm sewer and water systems and appurtenances thereto; and

**WHEREAS**, RCW Chapter 35.72 authorizes and establishes a procedure for providing reimbursement to parties constructing public street improvements; and

**WHEREAS**, it is deemed necessary and advisable to adopt a uniform rules for administration of the reimbursement program; and

**WHEREAS**, current City procedures for such reimbursement need to be clarified and to be collected in one Bellingham Municipal Code chapter; and,

**WHEREAS**, it is in the best interest of the City of Bellingham ("City") to implement procedures for reimbursement for owners who construct street, storm, sewer, drainage, sanitary sewer and water improvements that benefit others,

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** The following provisions of the Bellingham City Code are hereby repealed:

- ~ Chapter 13.10 -- Street Improvements --Assessment Reimbursement Contracts
- ~ Section 15.08.150(C)
- ~ Section 15.12.140(C)

**Section 2.** A new Chapter 14.02 of the Bellingham Municipal Code to be entitled "Street, Drainage, Water and Sewer Improvements--Assessment Reimbursement Contracts" hereby is adopted to read as follows:

**.010 Purpose.**

To establish a uniform methodology and process for the administration of reimbursement contracts applied for after January 1, 1998, for Developers in circumstances where a developer constructs a public facility, i.e. a water, sanitary sewer, storm sewer and/or street system improvement and desires to be compensated by property owners benefited by the improvements.

The provisions of this chapter are in addition to and intended to supplement any other requirements contained elsewhere in the Bellingham Municipal Code.

**.020 Definitions.**

(1) **Developer** The individual or entity that contracts with the City for the construction of Street and/or Utility System Improvements, where such improvements are a requirement for development of real property owned by such entity or individual.

(2) **Assessment Reimbursement Area** means that area which includes all parcels of real property adjacent to Street System Improvements or likely to require connection to or service by Utility System Improvements constructed by a Developer.

(3) **Cost of Construction** is the sum of the Direct Construction Costs incurred to construct the Street and/or Utility System Improvements plus indirect costs which are limited to the City Latecomer Administrative Fee (section .140), Construction Interest (subsection (9), below), and Developer Administrative Costs (subsection (4), below). "Direct Construction Costs" include but are not limited to all related design services, engineering, surveying, legal services, bonding costs, environmental mitigation, relocation and/or new construction of private utilities as required by the City, (i.e. power, telephone, cable and gas), relocation and/or installation of street lights, relocation and/or installation of signage, acquisition of right of way and/or easements, government agency fees, testing services, inspection, plan review and approval, labor, materials, equipment rental, and contractor and/or subcontractor fees or charges.

(4) **Developer Administrative Costs** means all indirect costs incurred by the Developer in

the creation and execution of a Public Facilities Agreement and managing the project; such as office supplies, mailings, clerical services, telephone expenses, accounting expenses, project oversight, and the like. Administrative costs shall not exceed three percent (3%) of all Direct Construction Costs.

(5) **Developer Reimbursement Agreement** means a written contract between the City and one or more Developers providing partial reimbursement for Cost of Construction of Street System Improvements and/or Utility System Improvements to the Developer by owners of property who are likely to utilize the improvements and who did not contribute to the original Cost of Construction.

(6) **Assessment** means an equitable pro rata charge to be paid by an owner of property within the Assessment Reimbursement Area for the cost of private construction of public Street and/or Utility System Improvements made pursuant to a Public Facilities Agreement.

(7) **Street System Improvements** mean public street and alley improvements made in existing or subsequently dedicated or granted rights of way or easements and any improvements associated therewith including but is not limited to such things as acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, grading, paving, installation of curbs, gutters, pedestrian facilities, street lighting, bike lanes, and traffic control devices, relocation and/or construction of private utilities as required by the City, (i.e. power, telephone, cable and gas), relocation and/or construction of street lights, traffic control devices, signage, and other similar improvements.

(8) **Utility System Improvements** mean public water, sewer and storm drainage system improvements including but not limited to the acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, testing, connection fees, and installation of improvements as required by the City and includes but is not limited to the following:

A. Water system improvements including but not limited to such things as treatment facilities, reservoirs, wells, mains, valves, fire hydrants, telemetry systems, pumping stations, and pressure reducing stations;

B. Sewer system improvements including but not limited to such things as treatment plants, gravity mains, lift stations, force mains, and telemetry systems;

C. Storm sewer system improvements including but not limited to such things as water quality structures and systems, detention and retention facilities, and storm water collection and conveyance facilities.

(9) **Construction Interest** means the sum of money to be added to the Direct Construction Cost and reimbursed to the Developer for the use of the Developer's monies during the Construction Term. The interest rate shall be 1% above the Federal Reserve bank prime loan rate published most recently before the date of the Public Facilities Agreement. Interest accrual begins on the date of execution of the Public Facilities Agreement and will continue throughout the Construction Term.

Construction interest shall be computed utilizing the Two Thirds Rule, i.e. direct Cost of Construction x Construction Interest Rate ÷ 365 x the Construction Term expressed in days x 0.67 = Construction Interest.

(10) **Construction Term** means that period of time between the date of execution of the Public Facilities Agreement and the date of acceptance of the project by the City or the construction completion date as set forth in the Public Facilities Agreement, whichever occurs first.

(11) **Public Facilities Agreement** means any agreement entered into by an individual or entity with the City for the purpose of constructing public improvements that are required to be constructed by the City as a prerequisite to the development of real property.

(12) **Adjacent** means abutting on public roads, streets, right of way or easements in which Street System Improvements is installed or directly connecting to Street System Improvements through an interest in real property such as an easement or license.

### .030 Applicability.

This chapter is intended to apply to all Street System Improvement and all Utility System

Improvements (subject to the limitation that as to street system improvements this chapter's applicability is limited to those improvements defined in RCW 35.72) where the construction of such improvements are the result of a City of Bellingham ordinance or ordinances that require such improvements as a prerequisite to property development. Street System Improvements constructed in order to comply with the City of Bellingham Subdivision Code, Zoning Code, Comprehensive Plan and Bellingham City Code chapter 13.08, are hereby declared to be prerequisites to further property development for the purpose of RCW 35.72.010.

**.040 Application for Developer Reimbursement Agreement.**

Any Developer using private funds to construct Street System Improvements and/or Utility System Improvements in the City or within the City's utility service area, may apply to the City for a Developer Reimbursement Agreement in order to recover a pro rata share of the Costs of Construction from subsequent users of the Street and/or Utility System Improvements made by Developer.

The application for a Developer Reimbursement Agreement shall be made prior to the date Street and/or Utility System Improvements have been accepted by the City pursuant to the Public Facilities Agreement for such improvements. Application shall be made on forms prepared by the Public Work Department and shall be accompanied by the City Administrative Fee set forth in Section .140. The application shall contain the following information which shall be approved by a State of Washington licensed engineer:

- A. A legal description of the Developer's property.
- B. A legal description of the properties within the Developer's proposed Assessment Reimbursement Area together with the name and address of the owners of each property as shown in the records of the Assessor's office of Whatcom County.
- C. Vicinity maps of Developer's property.
- D. The Developer's proposed Assessment Reimbursement Area and general location of the Street and/or Utility System Improvements.

E. Itemized cost data approved by a State of Washington licensed engineer for the Cost of Construction.

F. The Developer's proposed allocation of the Cost of Construction to the individual properties within the proposed Assessment Reimbursement Area and the method used for such allocation.

G. An Application Summary with project description, name of Developer and legal descriptions for each of the properties within the Assessment Reimbursement Area together with a statement of intent to collect the proposed allocation of Cost of Construction to each property. The Application Summary shall include the following language:

"This Application Summary shall have no further force or effect nor shall it constitute an enforceable obligation against any of the properties described herein upon the recording of a Developer Reimbursement Agreement made as to the property herein described.

This Application Summary shall have no further force or effect nor shall it constitute an enforceable obligation against any of the properties described herein after one year from the date of recording; provided, the effective term of the Application Summary may be extended by filing an extension executed by the Developer and approved in writing by the Public Works Department."

The Application Summary shall be in recordable form.

Filing of an Application Summary is elective. If no Application Summary is filed, then the provisions of section .080(A) and (B) shall not apply.

The Public Works Director shall establish policies and procedures for processing applications and complying with the requirements of this ordinance.

#### **.050 Preliminary Determinations.**

The Public Works Department shall formulate a preliminary Assessment Reimbursement Area and preliminary Assessment for real property benefited by the Street and/or Utility System Improvements based on the following and provide the same to the Developer:

A. The likelihood that benefited property will be developed within fifteen years from the date of recording of the Developer Reimbursement Agreement.

**B.** The likelihood that at the time of development of the benefited property such property will not be required to install similar Street and/or Utility System Improvements because they were already installed by the Developer.

**C.** For Street System Improvements, that benefited parcels are Adjacent to such Street System Improvements.

**D.** For Utility System Improvements, the likelihood (1) that such improvements will be tapped into or used (including not only direct connections but also connections to laterals or branches connecting thereto) by properties within the Assessment Reimbursement Area and (2) that such properties will receive a special benefit from the Utility System Improvements.

**E.** An equitable allocation of the Cost of Construction among the properties within the Assessment Reimbursement Area, so that each pays for benefits attributable to those Improvements. The method or methods used to calculate the allocation of the Assessment may be either front footage, number of units, square footage, or may be the zone and termini method or other recognized methods reasonably calculated to equitably allocate the Assessment.

**.060 Preliminary Determination Notice.**

**A.** The preliminary Assessment Reimbursement Area and the preliminary Assessment formulated by the Public Works Department shall be sent by certified mail to the property owners of record within the preliminary Assessment Reimbursement Area in accordance with RCW 35.72, as from time to time amended.

**B.** The applicant or any property owner within the preliminary Assessment Reimbursement Area may, in writing within 20 days of mailing of the notice, request a hearing to be held before the City Council to contest the preliminary Assessment Reimbursement Area and preliminary Assessment. Notice of such hearing shall be given to all property owners within the Assessment Reimbursement Area. Public hearing before the City Council shall be conducted as soon as is reasonably practical. After public hearing the City Council shall establish the Assessment Reimbursement Area and the Assessment for each property within the

Assessment Reimbursement Area applying the standards set forth in this ordinance. The City Council's determination of Assessment shall be determinative and final.

C. In the event no written request is received as required, the determination of the Public Works Department shall be final.

**.070 Developer Reimbursement Agreement.**

Based upon the preliminary Assessment Reimbursement Area and preliminary Assessment, if no hearing is requested, or based upon the City Council's determination of the Assessment Reimbursement Area and Assessment if a hearing is requested, the Public Works Department shall prepare and give to the applicant a Developer Reimbursement Agreement.

**.080 Recording/Effective Date/Payment of Assessment/Lien for Non-payment.**

A. The Developer's right to Assessments shall relate back to the date the Developer records an Application Summary pursuant to section .040(G), above.

B. Any property described in the recorded Application Summary shall be subject to the Assessment after it has been approved by the City pursuant to this chapter.

C. The Developer Reimbursement Agreement shall be promptly recorded by the City with the Whatcom County Auditor.

D. The City shall not issue a building permit or similar development permit or approval nor grant permission to use water or sewer service unless the City has received full payment of the Assessment, including interest, applicable to the property connecting to or using the Street and/or Utility System Improvements constructed by Developer.

E. If improvements are made to a property adjacent to a Street Improvement or if a property connects to a Utility System Improvement without payment of an Assessment otherwise due, the amount of such Assessment shall be a binding obligation upon the owner of record (and successors) of the affected property.

F. Failure by a property owner to pay the Assessment due within 180 days of notice to



this effect shall entitle the Developer to foreclose against the property in the same manner as a mortgage, and shall entitle the Developer to recover reasonable costs and attorney fees.

**.090 Segregation.**

The Public Works Department shall, upon the request of any property owner within the Assessment Reimbursement Area, segregate the Assessment. The segregation shall be based upon the same factors applied when the Assessments when originally established. The property owner seeking segregation of the Assessment shall pay an administrative fee to the City of Bellingham based upon a segregation fee schedule to be established by the Public Works Department.

**.100 Term of Developer Reimbursement Agreements.**

Each Developer Reimbursement Agreement shall be valid for a period not to exceed fifteen years from the date of its recording.

**.110 Removal of Unauthorized Connections or Taps.**

Whenever any tap or connection is made into any water, sewer, and/or storm sewer system(s) without payment of the Assessment being made as required by this ordinance, the Public Works Department shall cause it to be removed and disconnected.

**.120 Interest on Assessment.**

Each Assessment established in the Developer Reimbursement Agreement shall bear interest from the date of recording of the Developer Reimbursement Agreement at an interest rate) fixed at the Federal Reserve rate for one-year Treasury bills on the secondary market.

**.130 City Administrative Fees.**

A. The City shall charge for processing Developer Assessment Agreements the base fee

of \$300.00 for Utility System Improvements and \$450.00 for Street System Improvements. To the base fee shall be added one (1%) percent of the Cost of Construction.

**B.** Further, for every separate parcel of property within the applicant's proposed Assessment Reimbursement Area \$150 shall be added to the base fee established pursuant to the above schedule.

**C.** The base fee and the parcel fee shall be adjusted annually to reflect inflationary costs, increase or decrease. The adjusted fee shall be calculated by adjusting upwards or downwards in accordance with the change in the ENR Construction Cost Index for Seattle, WA, as published by McGraw-Hill. The ENR Construction Cost Index for Seattle, WA in January, 1997 = 6021.81. The fee established by this formula shall be rounded up or down to the next ten dollars (\$10).

**D.** The City Latecomer Administrative Fee shall be paid upon application for a Developer Reimbursement Agreement.

**.140 Payment of Developer Reimbursement Charge.**

Each Assessment shall be due in its entirety upon connection to or use of a Street and/or Utility System Improvement by a property subject to an Assessment, and shall be paid to the City in one lump sum including interest until date of payment. The City will pay over, to Developer, the amounts due within thirty (30) days of receipt.

When the Assessment for any property has been paid in full, the Public Works Director shall record a certification of payment that will release such property from the Developer Reimbursement Agreement.

**.150 Appeal.**

A Developer may appeal the interpretation and/or decisions of the Public Works Department concerning any aspect of this chapter to the City Council.

**.160 Enforcement of latecomer obligations.**

In processing and imposing obligations in this chapter for reimbursement of Developers, the City in no way guarantees payment of assessments by latecomers or enforceability of assessments or the amount(s) thereof against such persons or property. Nor will the offices or finances of the City be used for enforcement or collection of latecomer obligations beyond those duties specifically undertaken by the City herein. It shall be the obligations of a Developer to take whatever authorized means are available to enforce payment of latecomer assessments; and, Developers are hereby authorized to take such actions.

**.170 City Participation In Assessment Reimbursement.**

As an alternative to financing projects under this chapter solely by owners of real estate, the city may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, provided that (a) as to Street System Improvements, the conditions of the city's participation shall be specified by ordinance and (b) as to Utility System Improvements, the fifteen-year limitation in section .100 shall not apply. The city may be reimbursed only for the costs of improvements that benefit that portion of the public who will use the developments within a given assessment reimbursement area. No costs of improvement that benefit the general public may be reimbursed.

**Section 3.** Bellingham Municipal Code section 15.08.150(B) is amended to read as follows:

B. The city may, in accordance with state law, grant the person constructing a new water main the right to ~~partial~~ reimbursement from other abutting property owners benefited by the improvement pursuant to the provisions of Bellingham Municipal Code chapter 14.02. ~~Such reimbursement shall be administered by the city and shall be subject to reasonable overhead and administrative charges by the city.~~


**Section 4.** Bellingham Municipal Code section 15.12.140(B) is amended to read as follows:


B. The city may, in accordance with state law, grant the person constructing a new sewer main the right to ~~partial~~ reimbursement from other abutting property owners benefited by the improvement pursuant to the provisions of Bellingham Municipal Code chapter 14.02. ~~Such reimbursement shall be administered by the city and shall be subject to reasonable overhead and administrative charges by the city.~~

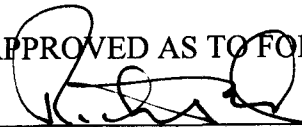
PASSED by the Council this 1st day of December, 1997.

  
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Council President

APPROVED by me this 16 day of December, 1997.

  
\_\_\_\_\_  
Mayor

ATTEST:   
Finance Director

APPROVED AS TO FORM:  
  
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Office of the City Attorney

PUBLISHED:  
12.18.97

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