

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, AMENDING CHAPTER 14.02 OF THE BELLINGHAM MUNICIPAL CODE IN REGARDS TO ASSESSMENT REIMBURSEMENT CONTRACTS.

WHEREAS, Chapter 14.02 of the City of Bellingham (the "City") Municipal Code establishes a uniform methodology and process for the administration of assessment reimbursement contracts; and,

WHEREAS, the Bellingham Municipal Code should be revised to enhance consistency and interpretability;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1: Bellingham Municipal Code 14.02.010 is hereby amended as follows:

14.02.010 - 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 uses private funds to construct a public utility and/or street system improvement(s) 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.

Section 2: Bellingham Municipal Code 14.02.020 is hereby amended as follows:

14.02.020 - Definitions

- (1) **Adjacent** means abutting on public roads, streets, right-of-way or easements in which street system improvements are installed or directly connecting to street system improvements through an interest in real property such as an easement or license.
- (2) **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.

- (3) **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.
- (4) **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 divided by 365 x the construction term expressed in days x 0.67 = construction interest.
- (5) **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.
- (6) **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, environment 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.
- (7) **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.
- (8) **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 3% of all direct construction costs.
- (9) **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.

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- (10) **Direct Connection** means a service connection, to be owned and maintained by the property owner and not the City, from existing or new utility improvements based on the following criteria:
- A. Water system direct connections are single and dual water service taps as defined in "Water Distribution System," section 6, Bellingham Development Guidelines and Improvement Standards, as currently enacted or as may be hereafter modified;
 - B. Sewer system direct connections include side sewer (service) connections as defined in "Sanitary Sewer System," Section 5, Bellingham Development Guidelines and Improvement Standards, as currently enacted or as may be hereafter modified;
 - C. Storm sewer system direct connections are hereby defined as, but not limited to, tight line, down spout, and roof leader service connections to storm sewer mains for the conveyance of site specific storm sewer.
- (11) **Public facilities agreement** means any agreement entered into by an individual or entity with the City for the purpose of construction public improvements that are required to be constructed by the City as a prerequisite to the development of real property.
- (12) **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 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.
- (13) **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.

Section 3: Bellingham Municipal Code 14.02.040 is hereby amended as follows:

14.02.040 - Application For Developer Reimbursement Agreement

A. 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 other property owners that will later derive a benefit from the street and/or utility system improvements made by developer.

B. The application for a Developer Reimbursement Agreement shall be made within 30 days after the date street and/or utility system improvements have been accepted by the city. Acceptance by the City shall mean, for purposes of this section, the date the public facilities are conveyed to the City by a Deed of Conveyance or other equivalent written document. Application shall be made on forms prepared by the Public Works Department and shall be accompanied by the city base fee set forth in Section .130. The application shall contain the following information which shall be approved by a State of Washington licensed engineer:

1. A legal description of the developer's property.
2. 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.
3. Vicinity maps of developer's property.
4. The developer's proposed Assessment Reimbursement Area and general location of the street and/or utility system improvements.
5. Itemized cost date approved by a State of Washington licensed engineer for the cost of construction.
6. 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.

C. Within 30 days of the Public Works Department receiving the application for a Developer Reimbursement Agreement, the Public Works Department will provide the applicant written notice of whether the application is complete and, if incomplete, what must be done for the application to be considered complete. The applicant will have no more than 30 days from the date of the written notice to respond and provide the information required to complete the application or, if the applicant can not submit the required information within the 30 day period, the applicant shall provide the City a written explanation of why they can not

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provide the information within the designated time period and a date that the requested information will be submitted. In its discretion, the Public Works Department may grant the applicant an extension of not more than 60 days to submit the required information. If the applicant fails to meet the foregoing time frame, the Public Works Department may, in its discretion, reject the application as untimely.

D. Within 30 days of receiving the complete application, the City will prepare and record with the county auditor's office an application summary. The application summary shall contain at least the following: project description, name of developer, legal descriptions for each of the properties within the Assessment Reimbursement Area together with a statement of intent to collect the proposed allocation of costs 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."

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

Section 4: Bellingham Municipal Code 14.02.050 is hereby amended as follows:

14.02.050 - 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 15 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

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laterals or branches connecting thereto) by properties within the assessment reimbursement area, and that such improvements do not constitute mainline extensions to be owned and maintained by the city, as such extensions are not defined as Direct Connections or (2) that such properties will receive a special benefit from the utility system improvements such as, but not limited to, pump stations, sewer lift stations, and additional utility pipe depth to accommodate future utility expansion.

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.

Section 5: Bellingham Municipal Code 14.02.060 is hereby amended as follows:

14.02.060 - 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 the notice, request a hearing to be held before the Hearing Examiner pursuant to BMC 2.56.050 to contest the preliminary assessment reimbursement area and preliminary assessment. Notice of such hearing shall be given to all property owners within the preliminary assessment reimbursement area and the hearing before the Hearing Examiner shall be conducted as soon as is reasonably practical. The procedure contained in BMC Chapter 2.56 shall govern the hearing. After the hearing, the Hearing Examiner shall develop a report with findings of fact, conclusions of law and recommendations to the City Council regarding establishing the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The City Council shall consider the record developed before the Hearing Examiner and the Hearing Examiner's report. City Council may allow public comment on the Hearing Examiner's report and, if a majority of the Council finds the record insufficient, may add to the record. After considering the record, the Hearing Examiner's report and public comment thereon, if any, City Council may adopt or reject the Hearing Examiner's recommendations in whole or in part or it may render its own findings and conclusions. City Council is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The City Council's determination of the assessment reimbursement area and the assessment shall be as provided by BMC 1.26.010 and shall be determinative and final.

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

Section 6: Bellingham Municipal Code 14.02.080 is hereby amended as follows:

14.02.080 - Recording/Effective Date/Payment Of Assessment/Lien For Non-Payment

- A. The developer's right to assessments shall relate back to the date the city records an application summary pursuant to section 14.02.040(D), 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 recorded by the city with the Whatcom County Auditor within 30 days of the agreement's final execution.
- 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; provided, if the Developer Reimbursement Agreement's validity is being challenged, the City reserves the right to issue a permit, approval or permission without liability or prejudice to the City and without prejudicing the developer's rights or remedies under this Chapter or otherwise at law or in equity.
- 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.

Section 7: Bellingham Municipal Code 14.02.110 is hereby amended as follows:

14.02.110 - Removal Of Unauthorized Connections Or Taps

Whenever any tap or connection is made into any utility system improvement without payment of the assessment being made as required by this Chapter, the Public Works Department is authorized to remove and disconnect, or cause to be removed and disconnected, such unauthorized tap or connection including all connecting tile or pipe located in the right of way and to dispose of such unauthorized material without liability. The owner of the property where the unauthorized connection is located shall be liable for all costs and expenses of any type incurred to remove, disconnect, and dispose of the unauthorized tap or connection.

Section 8: Bellingham Municipal Code 14.02.130 is hereby amended as follows:

14.02.130 - City Administrative Fees

- A. The city shall charge for processing Developer Reimbursement Agreements the base fee of \$300 for utility system improvements and \$450 for street system improvements. To the base fee shall be added 1% 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 in January, 1997 = 6,021.81. The fee established by this formula shall be rounded up or down to the next \$10.
- D. The city latecomer base fee shall be paid upon application for a Developer Reimbursement Agreement with all remaining fees paid prior to mailing the preliminary determination notices pursuant to BMC 14.02.060(A).

Section 9: Bellingham Municipal Code 14.02.150 is hereby amended as follows:

14.02.150 - Appeal

With the exception of determination of the preliminary assessment reimbursement area and preliminary assessment as provided by BMC 14.02.060 B., a developer may appeal the interpretation and/or decisions of the Public Works Department concerning any aspect of this chapter to the Hearing Examiner as provided by BMC Chapter 2.56.050 A.7.

Section 10: Bellingham Municipal Code 14.02.160 is hereby amended as follows:

14.02.160 - Enforcement Of Latecomer Obligations

- A. 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 enforceability of the Developer Reimbursement Agreement, 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. The City shall not be responsible for locating any beneficiary or survivor entitled to any benefits by or through a Developer Reimbursement Agreement.
- B. Any funds collected under this Chapter that are unclaimed by developers after three (3) years from the expiration of the Developer Reimbursement Agreement shall be returned

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to the parties making payment to the City, if they may be reasonably found and minus any reasonable administrative processing costs. Any undeliverable funds shall inure to the benefit of the City.

Section 11: Bellingham Municipal Code 14.02.170 is hereby amended as follows:

14.02.170 - City Participation In Assessment Reimbursement


The City may participate in financing street improvement projects pursuant to BMC 13.10.050.

PASSED by the Council this 12th day of January, 2004.



Council President


APPROVED by me this 16th day of January, 2004.



Mayor

Attest: 

Finance Director

Approved as to Form: 

Office of the City Attorney

Published: January 16, 2004

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