

CITY OF WHITE SALMON

ORDINANCE NO. 2015-07-973

AN ORDINANCE OF THE CITY OF WHITE SALMON, WA, AMENDING WSMC CHAPTER 13.28 LATECOMERS AGREEMENTS AUTHORIZED AND REPLACING WITH CHAPTER 13.28 DEVELOPER REIMBURSEMENT, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City has an ordinance authorizing Latecomer (Developer) Reimbursement Agreements; and

WHEREAS, the requirements of Developer Reimbursement Agreements have changed substantially by recent legislation (ESHB 1717). The City wishes to update its code to incorporate those changes.

NOW THEREFORE; THE CITY COUNCIL OF THE CITY OF WHITE SALMON DO ORDAIN AS FOLLOWS:

SECTION 1 – REPEALER. WSMC Ch. 13.28 (Ordinance 1997-7-634) is hereby repealed in its entirety and replaced with section set forth in Section 2, below.

SECTION 2 – A revised Chapter 13.28 is hereby adopted in its entirety:

CHAPTER 13.28 DEVELOPER REIMBURSEMENT

13.28.010 Purpose.

13.28.020 Definitions.

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13.28.010 Purpose.

The purpose of this developer reimbursement ordinance is to define the rules and regulations for executing contracts between the City and developers for private construction of municipal water, sewer, storm sewer and street system improvements by providing means for partial cost recovery through a charge to later users of the systems who did not contribute to the capital costs thereof and for establishing assessment reimbursement areas defining which property is subject to such charges.

13.28.020 Definitions.

The following definitions shall apply to this ordinance:

A. *"Assessment reimbursement area" or "benefit area"* means that area within the city or within ten miles of the City limits, which area includes parcels of real estate adjacent to, or likely to require connection to or service by, the water, sewer, storm sewer, and/or street system improvements constructed by a developer who has applied to the City for a developer reimbursement agreement pursuant to this ordinance.

B. *"Cost of construction"* means those costs incurred for design, acquisition of right-of-way and/or easements, labor, materials and installation as required to create an improvement which complies with City standards. In the event of a disagreement between the Public Works Director and the developer concerning the "cost of construction" in a particular situation, the determination of the Director of Public Works and Utilities shall be final.

C. *"Developer reimbursement agreement"* means a written contract between the City, as approved and executed by the Public Works Director, and one or more property owners providing for construction of water, sewer, storm sewer and/or street system facilities and for partial reimbursement to the party causing such improvements to be made of a portion of the costs of such improvements by owners of property benefitted by the improvements, as authorized and described in Chapters 35.72 and 35.91 RCW.

D. *"Developer reimbursement charge" or "assessment"* means a fair pro rata charge to be paid by an owner of property within an area benefitted by the private construction of municipal water, sewer, storm sewer and/or street system improvements pursuant to this ordinance.

E. *"Street system improvements or facilities"* means the acquisition of right-of-way and/or easements, design, inspection, grading, paving, installation of curbs, gutters, sidewalks, street

lighting, traffic control devices and other similar improvements in accordance with City standards.

F. *"Water, sewer, and storm sewer system improvements or facilities"* means the acquisition of right-of-way and/or easements, design, inspection and installation of improvements to City standards and includes the following:

1. *"Water system improvements"* includes such things as reservoirs, wells, mains and appurtenances such as valves, fire hydrants, telemetry stations, pumping stations, and pressure reducing stations;
2. *"Sewer system improvements"* includes such things as treatment plants, mains and manholes, pump stations, force mains, and telemetry stations;
3. *"Storm sewer system improvements"* includes such things as mains, retention/detention facilities, pumping stations, inlets, catch basins, and manholes.

13.28.030 Application for developer reimbursement agreement.

A. Any property owner, who uses private funds to construct water, sewer, storm sewer and/or street system improvements where the cost of construction is greater than \$6,000.00, said limit to be adjusted annually in accordance with the ENR (Engineering News-Record) Construction Cost Index, in the City or within the City's utility service area, to connect to existing City water, sewer, storm sewer or street systems for the purpose of serving the area in which the real property of such owner is located, may apply to the City to establish a developer reimbursement agreement in order to recover a pro rata share of the costs from subsequent users of the system(s).

B. The application must be on a form prescribed by the Public Works Director and must be accompanied by a nonrefundable application fee as set forth in WSMC 13.28.130.

C. The property owner must file the completed application and all supporting documents and fees prior to city approval of the project or it is time-barred.

D. The Public Works Director may require the applicant to submit a certified statement by a State of Washington licensed professional engineer containing an itemization of the total projected cost of the system improvements and a copy of the design drawings and specifications.

E. The Public Works Director is authorized to establish policies and procedures for processing applications and determining eligibility of a

system for a developer reimbursement agreement consistent with the requirements of this ordinance.

F. Applicants for developer reimbursement agreements must be in compliance with all City ordinances, rules and regulations in order to be eligible for processing of such agreements.

G. A developer reimbursement agreement application shall not be accepted for the improvement of a developer's abutting right-of-way and transitions as required pursuant to City ordinance. An exception may be allowed when vertical grade and alignment changes are required by the Public Works Director to promote traffic safety and the Public Works Director recommends a developer reimbursement agreement.

H. The proposed improvements must be consistent with the comprehensive utility and/or transportation plans of the City.

I. The City must have the capability and capacity to service the water, sewer, storm sewer and/or street facilities.

J. The applicant must agree to an annexation covenant for the property to be serviced by the proposed improvements, if such are located outside the City limits and any such improvements must be located no further than ten miles outside the City.

K. The application must comply with the requirements of this ordinance and all other applicable City ordinances.

13.28.040 Assessment reimbursement area and charge.

A. The Public Works Director shall formulate an assessment reimbursement area (benefit area) based on the following:

1. *For water, sewer and storm sewer systems.* The assessment reimbursement area shall be based upon a determination of which parcels did not contribute to the original cost of the utility system improvement(s) and are located so that they may subsequently be served by or use such improvement(s), including through laterals or branches connecting thereto.
2. *For street systems.* The assessment reimbursement area shall be based upon a determination of which parcels adjacent to the improvements would require similar street improvements upon development.

B. The Public Works Director will determine the assessment or charges for parcels within the assessment reimbursement area by calculating the fair pro rata share of the cost of construction for each property which might tap, connect or be served by the system(s), determined on an acre, front footage, equivalent water meter, or other equitable basis.

C. A notice containing the assessment reimbursement area boundaries, the preliminary assessments or charges, and a description of the property owner's rights and options under this ordinance, including the right to request a public hearing before the City Council with regard to the area boundaries and assessments, will be forwarded by registered mail to the property owners of record as shown on the records of the Klickitat County Assessor within the proposed assessment reimbursement area.

D. If any property owner requests a hearing in writing within 20 days of the mailing of the notice, a hearing shall be held before the City Council. Notice of such hearing shall be given to all affected property owners.

E. All notice requirements set forth in this ordinance shall be the sole responsibility of the applicant and shall be satisfied by a notarized affidavit that the applicant has mailed the notices pursuant to the requirements set forth herein.

F. After reviewing the public hearing testimony and the preliminary determination of the Public Works Director, the City Council may approve, modify or reject the assessment reimbursement area and/or charges. The City Council's determination shall be final.

13.28.050 Implementation of developer reimbursement agreement.

A. The application for developer reimbursement agreement and the non-refundable application fee shall be submitted to the Public Works Director prior to acceptance by the City of the improvements. The application shall be in compliance with the requirements of this ordinance and all other applicable City ordinances.

B. After the construction has been completed and accepted by the City in accordance with the terms of the developer reimbursement agreement, the final cost of the improvements shall be reviewed against the preliminary assessments established by the Public Works Director and the agreement and charges shall be modified accordingly.

C. The developer reimbursement agreement and a notice of the agreement and charge shall be recorded in the Klickitat County Auditor's office within 30 days of the final execution of the agreement. It shall be the sole responsibility of the applicant to record the agreement and notice.

D. The applicant shall mail a copy of the agreement and notice to each owner of record of all properties subject to the developer reimbursement charge. The applicant shall provide a notarized affidavit that the applicant has mailed the agreement and notice.

E. Once the agreement and notice are recorded and mailed, the developer reimbursement agreement and charge shall be binding on all owners of record within the assessment reimbursement area.

13.28.060 Rights and non-liability of City.

The City reserves the right, where permitted by law, to refuse to enter into any developer reimbursement agreement or to reject any application thereof. All applicants for developer reimbursement agreements shall be deemed to release and waive any claims for any liability of the City in the establishment and enforcement of such agreements. The City shall be not responsible for locating any beneficiary or survivor entitled to benefits under developer reimbursement agreements. Any collected funds not claimed by a developer prior to the expiration of a developer reimbursement agreement shall inure to the benefit of the appropriate utility and/or fund approved by the City Council.

13.28.070 Term of developer reimbursement agreements.

No developer reimbursement agreement shall extend for a period of 20 years or more for water, sewer and stormwater systems and for a period not to exceed 15 years for street system from the date of final acceptance by the City, plus extensions for a period of moratorium, phasing ordinance, concurrency designation or other governmental action that prevents development for a period of six months or more applicable to the project area. If the developer is reimbursed for the cost of the improvements prior to the expiration of the agreement, then further developer reimbursement charges and payments shall not be made.

13.28.080 Ownership of systems.

A. Upon approval of a developer reimbursement agreement and the completion and acceptance of construction, the system(s) shall become the property of the City. The City may charge and receive fees for utility system use according to the city's established rates.

B. A copy of the engineering "as built" plans, specifications and drawings, including all necessary right-of-way and easement documents shall be provided to the City prior to acceptance of the water, sewer, storm sewer and/or street facilities.

C. No connection to or other use of the facilities will be allowed or permitted until the City has officially accepted the construction.

13.28.090 Defective work.

The applicant shall be responsible for all work found to be defective within one year after the date of acceptance of the improvements by the City. The applicant shall provide the City with a "maintenance guarantee bond" or equivalent

acceptable to the City in the amount of ten percent of the value of the water, sewer, storm sewer and/or street system(s) to be in effect for a period of one year from the date of final approval and acceptance of the system(s). If the applicant does not correct the work within a reasonable period after notice of the defect, the City shall be reimbursed for costs of correcting such defective work either by the applicant or by the bond proceeds.

13.28.100 Connection/use prepayment requirement.

A. For the duration of this agreement, connection to or use of the system(s) shall be prohibited and development permission shall not be granted unless the city has received payment, or acceptable assurance of payment, of the developer reimbursement charge, including interest and administration costs.

B. The City will exercise its best efforts to assure compliance with this section; provided, however, that in no event shall the City incur liability for an unauthorized connection to or use of the facilities.

13.28.110 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 being made as required by this ordinance, the Public Works Director may cause to be removed such unauthorized tap or connection and all connecting pipe located in the City right-of-way without any liability to the City or City officials.

13.28.120 Interest on developer reimbursement charge.

A. The beneficiary of a developer reimbursement agreement will receive interest in accordance with the terms of this section.

B. If the charge is paid within 30 days from the date of execution of the agreement, no interest is payable. Otherwise, interest is payable from the date of execution of the agreement to the date of payment of the developer reimbursement charge.

C. The rate of interest will be fixed at the Federal Reserve rate for a ten-year Treasury Note on the date the developer reimbursement agreement is recorded.

D. Interest is calculated on the basis of a 365-day year and is not compounded.

E. Total interest payable may not exceed the principal amount of the developer reimbursement charge.

13.28.130 Administration costs.

The City shall add five percent, but not less than \$20.00 nor more than \$500.00, to each developer reimbursement charge as reimbursement for the City's administration costs. The City shall further charge a one-time fee of \$250.00 to recover the City's engineering and legal costs for the Developer Reimbursement Agreement.

13.28.140 Payments of developer reimbursement charge.

- A. Each payment of the developer reimbursement charge shall be made to the City in one lump sum including interest and administrative costs. The City will pay over the amounts due to the beneficiary within 60 days of receipt.
- B. When the developer reimbursement fee for a particular lot or parcel has been paid, at the request of the owner/payor the Public Works Director will approve a certification of payment which may be recorded by said owner.
- C. Throughout the term of the agreement the beneficiary shall in writing certify annually in January the name(s) and address(es) of the beneficiary. The City is not responsible for locating any person who may be entitled to benefits under any agreement. Failure to receive the annual certification required under this subsection will give the city cause to refuse to make payment under the agreement, and money received may become the sole and exclusive property of the City.

SECTION 3- SEVERABILITY. If any section, sentence, or phrase of this Chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence or phrase of this Chapter.

EFFECTIVE DATE. This ordinance shall become effective following passage and publication as provided by law.

PASSED in special session this 27th day of July, 2015.



David Poucher, Mayor



Leana Johnson, Clerk/Treasurer

Approved as to form:



Kenneth B. Woodrich, City Attorney