

## **ORDINANCE 75**

### **PRO RATA REIMBURSEMENT FOR UTILITY EXTENSIONS**

**AN ORDINANCE REGULATING REIMBURSEMENT FOR UTILITY EXTENSIONS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFORE; PROVIDING PENALTIES FOR THE VIOLATION WHEREOF; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF BAYSIDE:**

#### **ARTICLE I**

#### **PURPOSE AND INTENT**

The purpose of this ordinance is to define the rules and regulations for executing 15-year contracts between the city and developers for private construction of municipal water or wastewater improvements by providing means for both the partial cost recovery through a charge to later users who did not contribute to the capital costs; and for the establishment of benefit areas defining which properties are subject to such charges.

Nothing in this ordinance shall be construed to create any city obligation to subsequently provide city services to property within a reimbursement area.

#### **ARTICLE II**

#### **DEFINITIONS**

“Benefit or reimbursement area” means that area which includes parcels of real estate adjacent to, or likely to require a connection to improvements made by a developer who has applied to the city for a utility reimbursement agreement pursuant to this ordinance.

“City” means the Town of Bayside.

“Cost of construction” means those costs (excluding interest charges or other financing costs) incurred for design, acquisition for right-of-way and/or easements, construction, labor, materials and installation required in order to create an improvement which complies with city standards, as determined by the city council.

“Developer” means an individual, firm, corporation, limited liability company or partnership who proposes to improve real property within the city limits or its Extra Territorial Jurisdiction (ETJ).

“Utility reimbursement agreement” means a written contract, as approved by the city council and executed by the mayor, between the city and one or more developers providing both for construction of water or wastewater and for partial reimbursement to the developer(s) by owner(s) or property benefited by the

improvements. Although referred to generically as “utility reimbursement agreements” for ease of reference, such agreements will be processed separately as water reimbursement agreements or wastewater reimbursement agreements, each with its own application fee, reimbursement benefit area and charges.

“Utility reimbursement charge” means a fair pro-rata share of the actual and total initial costs associated with developing a utility improvement.

“Water or wastewater” means the acquisition of right-of-way and/or easements, design, inspection and installation of improvements to city standards, as defined in city ordinance as it now reads or as hereafter amended.

“Water system improvements” includes, without limitation, such things as treatment facilities, mains, reservoirs, wells and appurtenances such as valves, pumping stations and pressure reducing stations.

“Wastewater system improvements” includes, without limitation, such things as treatment facilities, mains and maintenance holes, pumping stations, force mains, inlets, catch basins, ditches, sales. This term also includes all sanitary sewer or storm sewer improvements.

### **ARTICLE III**

#### **DEVELOPER PARTICIPATION AGREEMENT FOR EXTENSION OF WATER AND WASTEWATER MAINS**

**SEC. 1** The City Council may make contracts with developers for the extension of water and wastewater mains, both within and outside the City limits of the Town of Bayside, as set forth herein. To be eligible for a reimbursement agreement, the estimated cost of the proposed improvement must be more than \$5,000. The estimated costs of the improvement shall be determined by the city council, based upon a construction contract for the project, bids, engineering or architectural estimates or other information deemed by the city council to be a reliable basis for estimating costs. The determination of the city council shall be final.

**SEC. 2** A developer shall make application for proposed water or wastewater line extension to the City and shall supply all necessary information (maps, diagrams, engineering reports, etc.) concerning the extension site, as may be required. An itemized estimate of the total projected costs of the system improvements prepared and signed by a licensed civil engineer or in the form of a bid submitted by a qualified contractor (if more than one bid has been obtained, all bids must be submitted to the city). The developer shall pay to the Town of Bayside an application fee of \$50.00.

**SEC. 3** Upon compiling all necessary and required information, the City shall develop a preliminary plan and cost estimate. The developer's proposed extension may be approved or disapproved by the Town Council. If approved, the City will execute a written contract with the property owner pursuant to terms and conditions agreed to by the City Council and by this section. After the utility reimbursement

agreement has been signed by all parties, and all necessary permits and approvals have been obtained, the applicant shall construct the improvements, beginning within 12 months, and upon completion, request final inspection and acceptance of the improvements by the city, subject to any required obligation to repair defects. If construction of the improvements covered by the utility reimbursement agreement has not begun within said 12 months, the utility reimbursement agreement shall be null and void; provided, however, the city council may extend for a period of 12 months.

**SEC. 4** A contract for water or wastewater main extension shall be made subject to all City of Bayside conditions, which may include but not be limited to the following:

- A.** All necessary mains, lines, fire hydrants, gate valves and other fittings shall be furnished and installed at the cost of the developer, All work shall be under the direction of the Town Engineer and the City, or as otherwise agreed;
- B.** The pipe diameter of any main to be extended shall be determined by the Town Engineer and the City;
- C.** No extension of any main or service line shall be laid except in a dedicated street, public road or approved easement, and each extension of a water main line shall terminate with a fireplug;
- D.** Such mains, lines, fire hydrants and gate valves shall become the property of the City immediately upon their installations, and the City shall have full control, management and jurisdiction of such lines, mains, fire hydrants and gate valves; and,
- E.** The City shall receive all revenues for water or wastewater service provided through such mains or lines.
- F.** When deemed necessary by the city council, the following information will also be required to assist in determining the benefit area and reimbursement charge:
  - 1.** A scaled vicinity drawing, stamped by a licensed civil engineer or licensed land surveyor, depicting the proposed improvements, location and benefited area;
  - 2.** The name and mailing address of each owner of record of property within the proposed benefit area, together with the legal description, size and county assessor tax number for each property, to be certified complete and accurate by the applicant; and
  - 3.** Such other information as the city council determines is necessary to properly review the application.

**SEC. 5** The developer making such extension may be entitled to reimbursement of up to but not to exceed the costs of materials and installation of such extension main, from the point of connection to an existing main to the developer's property, but not including any portion of such extension main along or adjacent to the developer's property. Upon recording, the utility reimbursement agreement and charge shall be binding upon all property owners of record within the benefit area who were not parties to the contract. Any such reimbursement shall be paid only out of funds received for such reimbursement as herein provided.

- A. Upon completion of any such extension main, the property owner shall furnish to the City satisfactory evidence as to the actual cost of such extension. The amount of such costs as finally determined by the City shall be conclusive for the purpose of reimbursement under this section. The costs may include administration, engineering and legal costs directly associated with the developer's application and contract. The completion date shall be determined by the City, which date as so established shall be conclusive.
- B. For each service connection made to any such extension by an individual water or wastewater user for a single-unit family dwelling or for each single-unit business (as distinguished from a connection by an owner or developer of an addition or subdivision, an apartment project, multi-unit dwelling project or commercial user of any type), the individual user so connecting shall, upon application and in addition to the usual service connection charge, pay to the City the sum prescribed, allowing for the developer's reimbursement.
- C. For each service connection made to such extension by an owner or developer of an addition or subdivision, an apartment project, multi-unit dwelling project or a commercial user of any type, the party making such connection shall, upon application and in addition to the usual service charge, pay to the City a connection fee determined by the City Council. When any such taps as are provided for in Sections B and C above are completed during the reimbursement period, the payments therein provided for (exclusive of the regular service-connection charges) shall be refunded to the developer making such extension as a partial reimbursement of such party's costs as set by the City Council in a contract. In no event shall "reimbursement fees" be collected or paid to an applicant later than the earlier of:
1. Fifteen years from the date of final acceptance of the improvements; or
  2. The date the applicant or the applicant's successor in interest has been paid the full amount of the "reimbursement fee".
- D. Any property owner making an extension of water or wastewater main which is a lateral extension to another extension made as hereinabove set out (but not a tap on the extension), and which lateral extension is made to serve property not fronting on or adjacent to the main to which such owner is connecting, shall be entitled to reimbursement on the same basis as the owner making such original extension, provided such owner shall also be obligated to pay to the Town the reimbursement charges on the extended main to which such owner is connecting, on the same basis as is provided in subsections B and C above, whichever is applicable.
- E. Before any reimbursement is made, there shall be a written contract between the Town and developer pursuant to and in accordance with this section. No connection to, or other use of the facilities will be allowed or permitted until the city has officially accepted the construction. Connection to or use of the system(s) by any property owner(s) shall be prohibited and permission and legal subdivision shall not be granted nor a building permit issued unless the city has received payment of a utility reimbursement charge. The city will

exercise its best efforts to assure compliance with this ordinance; however, in no event shall the city incur liability for an unauthorized connection to or use of the facilities. Where any tap or connection is made into any water, wastewater system(s) without payment being made as required by this ordinance, the city may order the unauthorized tap or connection and all connecting pipe located in the city right-of-way removed without any liability to the city or city officials.

- F. While the agreement is in effect, the City will collect the payments and forward them to the property owner who paid for the utility extension, as specified in the agreement. The developer shall be responsible for providing to the city, and maintaining with the city, an accurate current address. Absent such notice, the city is not responsible for locating any developer entitled to benefits under the utility reimbursement agreement. The developer may not assign any rights under the utility reimbursement agreement without written notification to the city. Absent such notification, any assignment of rights under the agreement shall have no effect on the obligations of the city under the reimbursement agreement. When funds are available for disbursement, the city shall notify the developer at the address on file with the city. The city shall pay the amounts due the beneficiary within 60 calendar days of receipt by certified mail, return receipt requested. If the developer fails to withdraw the funds within six months, the funds shall be forfeited to the city's water and sewer fund. Before the expiration of the 180 days, the city shall send to the developer, by certified mail, return receipt requested, a final notice of the city's intent to deposit the funds as city revenue. If the city does not receive a response in writing by the expiration of the 180 days, the city shall deposit the revenue to the applicable city wastewater or water utility, or as allowed by law.

**SEC. 6** Any ordinance approving a Developer's Agreement that allows a pro rata reimbursement provision with a developer who has paid for installation of either a water or wastewater extension line, pursuant to this section, shall set forth the legal property description of each lot or tract affected by such agreement and the amount of costs to be reimbursed upon connection to the line by each property owner affected, and shall be recorded in the Official Public Records of Refugio County, Texas. The contract shall, by its own terms, expire and be of no further effect upon the expiration of the fifteen-year contractual reimbursement period. Not less than fifteen (15) days before first reading of a proposed ordinance adopting a developer's pro rata reimbursement ordinance that may affect other property owners inside the Town limits of the Town of Bayside, written notice of such ordinance and the anticipated pro rata costs attributed to each property shall be given to each such affected property owner.

**SEC. 7** 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. Failure to comply may void any contract agreement.



**ARTICLE IV  
RIGHTS AND NONLIABILITY OF CITY.**

A. The city reserves the right to refuse to enter into any utility reimbursement agreement or to reject any application thereof.

B. All applicants for utility reimbursement agreements shall be required to provide a written release, indemnification, and hold harmless agreement releasing and indemnifying the city from all claims of any nature, including property damage and personal injury arising out of the execution, establishment, enforcement and implementation of such agreement including claims arising during the course of construction and during the one-year warranty period following acceptance of the improvements by the city. Such indemnification shall include attorney fees and costs reasonably incurred in the defense of such action.

**ARTICLE V  
VALIDITY**

The validity of any section, clause, sentence, or provision of this ordinance shall not effect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

**ARTICLE VI  
SEVERABILITY**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the Town Council in adopting this ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this ordinance are declared severable for that purpose.

**ARTICLE VII  
EFFECTIVE DATE**

This ordinance shall be in full force and effect as soon as all necessary publication requirements have been met.

Passed, ordained, approved and adopted this the 20<sup>th</sup> day of April, 2004.

Attest:

Connie Cramer

City secretary

By: Billy P. Frick

Mayor Town of Bayside, Texas