

ORDINANCE NO. 2016-

AN ORDINANCE

adopting a requirement for reimbursements for utility improvements and adding Section 7.67: Reimbursement Agreements for Utility Improvements to the Yakima Municipal Code.

WHEREAS, improving the effectiveness and efficiency of utilities, such as water, storm water, and sewer services, improves public health; and

WHEREAS, property owners who install utility improvements should be able to recover a portion of the costs of those improvements from other property owners who later develop property in the vicinity and use and benefit from the utility improvements previously constructed; and

WHEREAS, financing arrangements could be a valuable tool for developers to develop utility infrastructure intended to service future development in areas that are not currently connected to public utility services; and

WHEREAS, the City Council wishes to enact legislation authorizing developers to collect reimbursement from subsequent connectors to the system for their pro rata contribution to water, storm water, and sewer infrastructure when they develop facilities intended to serve additional properties in the future; and

WHEREAS, the City Council finds and determines that adopting this ordinance is in the best interests of the residents of the City of Yakima and will promote the general health, safety and welfare; now, therefore

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1: Chapter 7.67: Reimbursement Agreements for Utility Improvements, shall be added to the Yakima Municipal Code as follows:

Chapter 7.67 (City of Yakima)

REIMBURSEMENT AGREEMENTS FOR UTILITY IMPROVEMENTS

Sections:

- 7.67.010 Purpose.
- 7.67.020 Definitions.
- 7.67.030 Minimum project size.
- 7.67.040 Application.
- 7.67.050 Length of reimbursement provision.
- 7.67.060 Engineer's determination – Review by City Manager
- 7.67.070 Determination of reimbursement area boundary and reimbursement fee.

- 7.67.090 Reimbursement agreement must be recorded.
- 7.67.100 Written agreement – Payment of city costs in excess of application fee.
- 7.67.110 Construction and acceptance of improvements – Recording of final fees.
- 7.67.120 Collection of reimbursement fees – No liability for failure to collect.
- 7.67.125 Segregation of reimbursement fees.
- 7.67.130 Notice of contract information.
- 7.67.140 Severability.

7.67.010 Purpose.

The purpose of this chapter is to prescribe rules and regulations for exercise of authority to enter into a Utility Reimbursement Agreement granted to the City by RCW Chapter 35.91 (also commonly referred to as Latecomers Agreements). The rules and regulations included in this chapter are based on Yakima's interpretation that Chapter 35.91 contemplates that reimbursement agreements will be executed prior to commencement of construction.

7.67.020 Definitions.

As used in this chapter, the terms listed below shall be defined as follows:

- A. "Cost of Construction" means those costs incurred for design, acquisition for right-of-way and/or easements, construction, materials and installation required in order to create an improvement which complies with city standards. Until such time as RCW Chapter 35.91 is amended to expressly authorize of interest charges or other financing costs, such expenses shall not be included in the calculation of construction costs. In the event of a disagreement between the city and the applicant concerning the cost of the improvement, the city engineer's determination shall be final.
- B. "Engineer" means the City Engineer or his/her designated representative.
- C. "Reimbursement agreement" means a written contract between the city and one or more property owners providing for construction of water or sewer 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 more specifically described in RCW Chapter 35.91.
- D. "Water or sewer facilities" shall have the meaning specified in RCW 35.91.015 as it now reads, or as hereafter amended.

7.67.030 Minimum project size.

In order to be eligible for a reimbursement agreement, the estimated cost of the proposed improvement must not be less than five thousand dollars. The estimated cost of the improvement shall be determined by the Engineer, based upon a construction contract for the project, bids, engineering or architectural estimates or other information

deemed by the Engineer to be a reliable basis for estimating costs. The determination of the Engineer shall be final.

7.67.040 Application.

An application for reimbursement agreement shall be made on a form provided by the city. The application fee shall be set by council resolution and shall be submitted to the city with the written application and shall be accompanied by:

- A. Preliminary utility design drawings;
- B. Itemized estimate of construction costs 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);
- C. A scaled vicinity drawing on eight and one-half inch by eleven inch paper; stamped and sealed by a licensed civil engineer or licensed land surveyor depicting the improvements and their location and the proposed benefitted area, including dimensions and county assessor's numbers for each tax parcel, size of parcels, and evaluations where necessary for determining benefits;
- D. A separate legal description for each tax parcel within the benefitted area; and,
- E. Such other information as the Engineer determines is necessary to properly review the application.

7.67.050 Length of reimbursement provision.

The reimbursement agreement shall be in effect for 20 years from the effective date of the agreement.

7.67.060 Engineer's determination – Review by City Manager

- A. The Engineer shall review all applications and shall approve the application if the following requirements are met:
 - 1. The project satisfies the minimum size requirement;
 - 2. The proposed improvements fall within the description of water or sewer facilities as those described in RCW Chapter 35.91; and
 - 3. The proposed improvements are not constructed or currently under construction.
- B. In the event all of the above criteria are not satisfied, the Engineer may condition approval as necessary in order for the application to conform to such criteria, or shall deny the application. The final determination of the Engineer shall be in writing. The applicant may obtain a review of the final determination by filing a request by filing a request there for with the City Clerk no later than ten (10) days

after the city has mailed a copy of the final determination to the applicant at the address listed on the application.

- C. In reviewing a final determination, the City Manager shall apply the criteria set forth above, and shall uphold the decision of the Engineer unless evidence presented by the applicant clearly demonstrates that the criteria have been satisfied.

7.67.070 Determination of reimbursement area boundary and reimbursement fee.

In the case of all application which are approved, the City Engineer shall define the reimbursement area based upon a determination of which parcels did not contribute to the original cost of the water or sewer facility for which the reimbursement agreement applies and which may subsequently tap into or use the same, including not only those which may connect directly thereto, but also those who may connect to laterals or branches connecting thereto. An estimated amount of the reimbursement fee shall be established so that each property will pay a share of the costs of the improvements, which is proportional to the benefits which accrue to the property.

7.67.090 Reimbursement agreement must be recorded.

In order to become effective, a reimbursement agreement must be recorded with the office of the Yakima County department of records and elections. It shall be the sole responsibility of the beneficiary of the reimbursement agreement to verify the agreement has been recorded. Once recorded, the reimbursement agreement shall be binding on all real property within the assessment area, even those properties and owners who are not parties to the agreement.

7.67.100 Written agreement – Payment of city costs in excess of application fee.

- A. Upon approval of the application, determination of the estimated costs of construction, the reimbursement area and estimated fees by the Engineer, the applicant shall sign a reimbursement agreement in the form supplied by the city, and in accordance with RCW 35.91. The signed agreement, the application and supporting documents, together with the Engineer's estimate of cost of construction, and determination of reimbursement area and estimated fees shall be presented to the City Manager. The City Manager is hereby granted the authority to sign reimbursement agreements on behalf of the city.
- B. In the event that costs incurred by the city for engineering or other professional consultant services required in processing the application exceed the amount of the application fee, the Engineer shall so advise the City Manager and City Manager's approval shall be conditioned upon receipt of payment by the applicant of an additional amount sufficient to compensate the city for its costs in excess of the application fee.

7.67.110 Construction and acceptance of improvements – Recording of final fees.

- A. After the reimbursement agreement has been signed by both parties, and all necessary permits and approvals have been obtained, the applicant shall

construct the improvements, and upon completion, request final inspection and acceptance of the improvements by the city, subject to any required obligation to repair defects. An appropriate bill of sale, easement and any other document needed to convey the improvements to the city and to insure right of access for maintenance and replacement shall be provided by the applicant, along with documentation of the actual costs of the improvements and a certification by the applicant that all of such costs have been paid.

- B. In the event that actual costs are less than the Engineer's estimate used in calculating the estimated fees by ten percent or more, the Engineer shall recalculate the fees, reducing them accordingly and shall cause a revised list of fees to be recorded with the county auditor.

7.67.120 Collection of reimbursement fees – No liability for failure to collect.

- A. Subsequent to the recording of a reimbursement agreement, the city shall not permit connection of any property within the reimbursement area to any sewer or water facility constructed pursuant to the reimbursement agreement, unless the share of the costs of such facilities required by the recorded agreement is first paid to the city.
- B. Upon receipt of any reimbursement fees, the city shall deduct a six percent administrative fee and remit the balance of the reimbursement fees to the party entitled to the fees pursuant to the agreement. In the event that through error, the city fails to collect a required reimbursement fee prior to approval of connection to a sewer or water facility, the city shall make diligent efforts to collect such fee, but shall under no circumstances be obligated to make payment to the party entitled to reimbursement, or in any other way be liable to such party, unless such reimbursement fee has actually been paid to the city.

7.67.125 Segregation of reimbursement fees.

The reimbursement agreement shall provide that the City is authorized to make segregation or adjustments to reimbursement fees because of subdivision or boundary line adjustment of the benefitted properties. The segregation or adjustment shall generally be made in accordance with the method used to establish the original reimbursement fees. Segregation or adjustment shall not increase or decrease the total reimbursement fees to be paid.

7.67.130 Notice of contract information.

The reimbursement agreement shall include a provision that requires that any party entitled to reimbursement under the agreement provide the City current contact information including name, address and telephone number. This contact information shall be provided every two years from the date of the agreement. If a party entitled to be reimbursed fails to notify the City of current contact information within 60 days of the due date for notification that party will no longer be entitled to reimbursement and the City will collect such fees owing and deposit those fees in the appropriate utility construction fund.

7.67.140 Severability.

If any section, sentence, clause or phrase of this chapter should be 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, clause or phrase of this chapter.

Section 2: If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional, unlawful or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

PASSED BY THE CITY COUNCIL, signed and approved this 6th day of September, 2016.

Kathy Coffey, Mayor

ATTEST:

Sonya Claar-Tee, City Clerk

Publication Date: _____

Effective Date: _____