

## Chapter 14.25

### STREET AND UTILITIES ASSESSMENT REIMBURSEMENT AGREEMENTS – LATECOMERS AGREEMENTS

Sections:

- 14.25.010 Purpose.**
- 14.25.020 Definitions.**
- 14.25.030 Application for development reimbursement agreement.**
- 14.25.040 Preliminary determinations.**
- 14.25.050 Preliminary determination notice.**
- 14.25.060 Developer reimbursement agreement.**
- 14.25.070 City as developer.**
- 14.25.080 Effective date – Payment of assessment – Lien for nonpayment.**
- 14.25.090 Segregation.**
- 14.25.100 Term of developer reimbursement agreements.**
- 14.25.110 Removal of unauthorized connections or taps.**
- 14.25.120 City application fee and cost recovery.**
- 14.25.130 Payment of developer reimbursement charge – Collection administration fee.**
- 14.25.140 Enforcement of latecomer obligations.**

#### **14.25.010 Purpose.**

The purpose of this chapter is to provide the conditions and procedures under which developers, including the City, who installed qualifying improvements requisite for future development and pursuant to the City's development ordinances and policies, may be partially reimbursed for the expenses of such improvements by noncontributing benefited owners of adjacent properties in compliance with Chapters [35.72](#) and [35.91](#) RCW.

This chapter is intended to apply to:

- (1) *Street Improvements.* Street improvements include all arterial street system improvements which are the result of a City ordinance that requires such improvements as a prerequisite to further property development. Arterial street system improvements constructed in order to comply with the City's subdivision and zoning codes and the City's Comprehensive Plan are hereby declared to be prerequisites to further property development for the purposes of RCW [35.72.010](#).
- (2) *Utility System Improvements.* Utility system improvements include all utility system improvements which are the result of a City ordinance that requires such improvements as a prerequisite to further property development. Utility system improvements constructed in order to comply with the City's Comprehensive Plan, development

regulations, and permitting requirements are hereby declared to be prerequisites to further property development within the City, or as provided in RCW [35.91.020](#). [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.010.]

## **14.25.020 Definitions.**

“Adjacent” means abutting on public roads, streets, rights-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.

“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 developer reimbursement agreement.

“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.

“Cost of construction” is the sum of the direct construction costs incurred to construct the street and/or utility system improvements plus the City latecomer administrative fee. “Direct construction costs” include 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 and the actual labor and material construction costs incurred by the developer.

“Developer” is 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. As permitted by RCW [35.72.050](#) and [35.91.020](#), the City, or other public entity, may join with or be construed as a “developer” for the purpose of recovery of street or utility system improvement costs.

“Developer reimbursement agreement” means a written contract between the City and one or more developers providing partial reimbursement for the 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. Where the City has elected the alternative financing method as provided in RCW [35.72.050](#) or [35.91.020](#), the developer reimbursement agreement shall be between the City, as the developer, and the adjacent property owners for the construction or improvement of street system or utility system improvements within the City.

“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.

“Latecomer fee” means a charge collected by the City against a real property owner who:

- (a) Connects to or uses the utility system improvement where fees are separately stated, or is a part of a connection fee or other fee for providing access to the City's utility system;
- (b) Receives a building or development permit for real property located adjacent to, or having access to the street system improvement constructed under this chapter; or
- (c) Receives a building or development permit for real property located within the assessment reimbursement area which is subject to an agreement created under this chapter.

"Street system improvements" means 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.

"Utility system improvements" mean public water, sewer and storm drainage system improvements as defined by RCW [35.91.015](#), which shall include but not be 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, by utility type:

- (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; and
- (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. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.020.]

### **14.25.030 Application for development reimbursement agreement.**

(1) *Application Required.* An application for developer reimbursement agreement must be submitted upon a form provided by the City prior to approval by the City.

- (a) Street system improvement approval shall for the purpose of this section be the date the City authorizes the construction to occur by granting a permit, extension agreement, or written authorization to proceed; or
- (b) Utility system improvement approval shall for the purpose of this section be the date the City authorizes execution of a utility extension agreement, or written authorization to proceed.
- (c) Such application shall contain the following information which shall be approved by a State of Washington licensed engineer:

- (i) A legal description of the developer's property.
- (ii) A legal description of the properties within the developer's proposed assessment reimbursement area, together with the names and addresses of the owners of such property as shown on the records of the Assessor's Office of Franklin County.
- (iii) Vicinity maps of the developer's property.
- (iv) The developer's proposed assessment reimbursement area and general location of the system improvements to be included.
- (v) The developer's proposed allocation of the costs of construction to the individual properties within the proposed assessment reimbursement area and the method used for such allocation.
- (vi) Construction drawings or as-built drawings as required by the Public Works Department.

(2) *Street System Improvements.*

- (a) At the developer's request, by written application, the City may enter into a developer reimbursement agreement for the construction of qualifying street system improvements required as prerequisite for further property development 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 system improvements made by developer.
- (b) Developer reimbursement agreements for road or street construction shall meet the following criteria:
  - (i) New street construction or reconstruction of existing streets meeting the arterial street standards to include concrete curb and gutter; or
  - (ii) Partial new street construction or reconstruction of an existing street to City arterial street standards on streets that do not abut real property owned by the developer.
  - (iii) Unless the City provides written notice to the developer of its intent to request a Comprehensive Plan approval, the developer must request a Comprehensive Plan approval for street system improvements, if required.
  - (iv) Acceptance of the street system improvement must be conditioned upon:
    - (A) Construction of the street system improvements according to the plans and specifications approved by the City;
    - (B) Inspection and approval of the street system improvements by the City;
    - (C) Transfer to the City of the street system improvements, without cost to the City, upon acceptance by the City of the street system improvements;
    - (D) Full compliance with the developer's obligations under the agreement and with the City's rules and regulations;

- (E) Provision of sufficient security to the City to ensure completion of the street system improvements and other performance under the agreement;
- (F) Payment by the developer to the City of all of the City's costs associated with the street system improvements including, but not limited to, engineering, legal, and administrative costs;
- (G) Verification and approval of all agreements and costs related to the street system improvements; and
- (H) Within 120 days of acceptance by the City of the street system improvements, the developer must submit the total costs of the street system improvements to the City. This information will be used as the basis for determining reimbursements by future users who benefit from the street system improvements, but who did not contribute to the original cost of such improvements.

(3) *Utility System Improvements.*

- (a) At the developer's request, by written application, the City will enter into a developer reimbursement agreement for the construction or improvement of qualifying utility system improvements or facilities in order to recover a pro rata share of the costs of the construction of such improvements or facilities from other property owners that will later connect to and derive a benefit from the improvements made by a developer.
- (b) Developer reimbursement agreements for utility system improvements shall meet the following criteria:
  - (i) Utility system improvements constructed or improved in accordance with this subsection must be located within the City's corporate limits or, except as provided otherwise by this subsection, within 10 miles of the City's corporate limits.
  - (ii) Unless the City provides written notice to the developer of its intent to request a Comprehensive Plan approval, the developer must request a Comprehensive Plan approval for utility system improvements, if required.
  - (iii) Connections of the sewer water facility to the municipal system must be conditioned upon:
    - (A) Construction of the utility system improvements according to plans and specifications approved by the City;
    - (B) Inspection and approval of the utility system improvements by the City;
    - (C) Transfer to the City of the utility system improvements, without cost to the City, upon acceptance by the City of the utility system improvements;
    - (D) Full compliance with the developer's obligations under the agreement and with the City's rules and regulations;
    - (E) Provision of sufficient security to the City to ensure completion of the utility system improvements and other performance under the agreement;

- (F) Payment by the developer to the City of all of the City's costs associated with the utility system improvements including, but not limited to, engineering, legal, and administrative costs;
- (G) Verification and approval of all agreements and costs related to the utility system improvements; and
- (H) Within 120 days of the completion of utility system improvements, the developer must submit the total cost of the utility system improvements to the City. This information will be used as the basis for determining reimbursements by future users who benefit from the water or sewer improvements, but who did not contribute to the original cost of such improvements.

(c) The City shall not permit a developer reimbursement agreement under this subsection until determination has been made by the City for payment of utility oversizing costs or reimbursement of the developer for the construction costs of all or a portion of the improvements.

(d) Except as provided in subsection [\(3\)\(c\)](#) of this section, all costs of the construction of the improvements and facilities of utility system improvements shall be borne by the developer.

(4) The Public Works Department shall within 28 days after receipt of the request provide the developer written notice whether the application is complete and, if incomplete, what must be done for the application to be considered complete. The developer shall within 30 days from the date of the written notice respond and provide the information required to complete the application or, if the developer cannot submit the required information within the 30-day period, the developer shall provide the City a written explanation of why they cannot 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 developer an extension of not more than 60 days to submit the required information. If the developer fails to meet the foregoing time frame, the Public Works Department may, in its discretion, reject the application as untimely.

(5) The Public Works Director shall establish policies and procedures for processing applications and complying with the requirements of this chapter.

(6) The City, prior to approval, shall provide notice of the City's intent to participate in the funding of the improvements either under RCW [35.72.050](#), RCW [35.91.020](#), or under subsection [\(3\)\(c\)](#) of this section. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.030.]

#### **14.25.040 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:

(1) The likelihood that benefited property will be developed within 15 years (in the case of street system improvements) or 20 years (in the case of utility system improvements) from the effective date of the developer reimbursement agreement.

- (2) 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.
- (3) For street system improvements, that benefited parcels are adjacent to such street system improvements.
- (4) For utility system improvements, the likelihood:
  - (a) That such improvements will be tapped into or used (including not only direct connections but also connection to laterals or branches connecting thereto) by properties within the assessment reimbursement area; or
  - (b) 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.
- (5) 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. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.040.]

#### **14.25.050 Preliminary determination notice.**

- (1) The preliminary assessment reimbursement area and the preliminary assessment formulated by the Public Works Department, including the preliminary determination of area boundaries, assessments, and a description of the property owner's rights and options, shall be sent by certified mail to the property owners of record within the preliminary assessment reimbursement area.
- (2) The developer or any property owner within the preliminary assessment reimbursement area may, in writing within 20 days of the date of mailing 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 preliminary assessment reimbursement area and the hearing shall be conducted as soon as is reasonably practical. The City Council is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area.
- (3) In the event no written request for a hearing is received as required, the determination of the Public Works Department shall be final. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.050.]

#### **14.25.060 Developer reimbursement agreement.**

- (1) Based upon the preliminary assessment reimbursement area and the 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 developer a developer reimbursement agreement.

(2) Each agreement shall include a provision requiring that every two years from the date the agreement is executed, the developer entitled to reimbursement under this section shall provide the City with information regarding the current contact name, address, and telephone number of the person, company, or partnership that originally entered into the agreement. If the developer fails to comply with the notification requirements within 60 days of the specified time, then the City may collect any reimbursement funds owed to the developer under the agreement. The funds collected under this subsection shall be deposited in the capital expenditure account of either the City's utility fund or street fund, as appropriate. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.060.]

### **14.25.070 City as developer.**

As an alternative to financing projects under this chapter solely by a developer, the City may join in the financing of improvement projects and may be reimbursed in the same manner as the developer who participates in the projects. As another alternative, the City may create an assessment reimbursement area on its own initiative, without the participation of a private property owner or developer, finance the costs of the street or utility improvements, and become the sole beneficiary of the reimbursements that are contributed. The City will only seek to be reimbursed for the costs of improvements that benefit that portion of the public who will use the improvements within the assessment reimbursement area established pursuant to state law. No costs for improvements that benefit the general public may be reimbursed. [Ord. 4156, 2014; Code 1970 § 14.12.070.]

### **14.25.080 Effective date – Payment of assessment – Lien for nonpayment.**

(1) The developer reimbursement agreement shall be effective upon its execution and recording as provided in PMC [14.25.120](#).

(2) 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 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.

(3) 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. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.080.]



### **14.25.090 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 were originally established. The property owner seeking segregation of the assessment shall pay an administrative fee plus any costs and expenses of the City, as set forth in Chapter [3.35](#) PMC for such segregation, calculation and recording as necessary. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.090.]

### **14.25.100 Term of developer reimbursement agreements.**

(1) Each developer reimbursement agreement for:

- (a) Street system improvements shall be valid for a period not to exceed 15 years from the effective date of the agreement; and
- (b) Utility system improvements shall be valid for a period not to exceed 20 years from the effective date of the agreement.

(2) The developer reimbursement agreement may provide for an extension of the reimbursement periods as provided above for a time not to exceed the duration of any moratorium, phasing ordinance, concurrent designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(3) Upon the extension of the reimbursement period pursuant to this section, the agreement must specify the duration of the agreement extension and must be filed and recorded with the County Auditor. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.100.]

### **14.25.110 Removal of unauthorized connections or taps.**

Whenever any tap or connection is made into any utility 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. [Ord. 3709 § 1, 2004; Code 1970 § 14.12.110.]

### **14.25.120 City application fee and cost recovery.**

The City shall charge an application fee for processing developer reimbursement agreements as identified in Chapter [3.35](#) PMC. In addition, the applicant shall pay all of the City's costs associated with the facility including,

but not limited to, engineering costs as set forth in Chapter [3.35](#) PMC, and the actual legal, recording, and administration costs. Developer reimbursement agreements and extensions thereof shall be recorded with the Franklin County Auditor within 30 days of the final execution of the agreement, and shall be binding on owners of record within the assessment area who are not parties to the agreement. [Ord. 4277, 2016; Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.120.]

#### **14.25.130 Payment of developer reimbursement charge – Collection administration fee.**

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. The City shall deduct from all reimbursement assessments it collects an amount as designated in PMC [3.35.180](#) to cover its collection administration costs. The City will pay over to developer the amounts collected, less administration costs, within 60 days of receipt.

When the assessment for any property has been paid in full, the Public Works Director shall issue a certification of payment that will release such property from the developer reimbursement agreement which may be recorded by the owner. [Ord. 4277, 2016; Ord. 3709 § 1, 2004; Code 1970 § 14.12.130.]

#### **14.25.140 Enforcement of latecomer obligations.**

(1) Nothing in this chapter is intended to create a private right of action for damages against the City for failing to comply with the requirements of this chapter. The City, its officials, employees, or agents may not be held liable for failure to collect a reimbursement assessment or latecomer fee unless the failure was willful or intentional. Failure of the City to comply with the requirements of this chapter does not relieve the City of any future requirement.

(2) 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 assessment, or enforceability of the development 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 obligation 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. [Ord. 4156, 2014; Ord. 3709 § 1, 2004; Code 1970 § 14.12.140.]

**The Pasco Municipal Code is current through Ordinance 4425, passed February 19, 2019.**

Disclaimer: The City Clerk's office has the official version of the Pasco Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.pasco-wa.gov](http://www.pasco-wa.gov)

City Telephone: (509) 544-3080

[Code Publishing Company](#)