

CHAPTER 02-12 LATECOMER'S ORDINANCE REIMBURSEMENT FOR PRIVATELY FUNDED PUBLIC IMPROVEMENTS

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02-12-001 PREAMBLE

From time to time, owners of property or developers are required to install public improvements as a condition of approval of development or construction activities within Naples City. When those privately funded public improvements create a benefit to other land within the City, any person subsequently building upon or developing that land or utilizing those public improvements may be required to reimburse the person or entity paying for those public improvements a pro rata share of the cost.

Upon compliance by the original installer of the public improvements, with the terms of this ordinance, the City will require a pro rata reimbursement from any applicant or person subsequently constructing a building or developing a development that is served by or receives benefit from the previously installed privately funded public improvements. The amount of the required contribution and reimbursement shall be determined by Naples City. The Naples City Planner shall determine the percentage of the cost of the privately funded public improvements that should be assessed against each subsequently developed parcel of real property served by those public improvements. If the subsequent land owner or developer charged disagrees with the apportionment, the decision of the Naples City Planner may be appealed to the City Council. Factors to be considered shall include the relative sizes and values of parcels of property served by the privately funded public improvements. The percentage of use of those private improvements which will be enjoyed by the subsequently developed properties, the costs savings to the subsequent developers of real property. Another factor is deemed relevant in a given case.

02-12-002 APPLICATION FOR REIMBURSEMENT

Any individual or developer that is required to install public improvements costing more than three thousand dollars (\$3,000.00) may submit an application to the City for recovery of a pro rata share of the cost of constructing those privately funded public improvements from persons that will use or benefit from extra capacity from those public improvements and that did not share in the cost of the improvements. The application for reimbursement shall be made on a form approved by the City Attorney and shall include the following information:

- A. A description of the privately funded public improvements which benefit other property not owned by the installer.
- B. The name and address of the person or entity that paid for the installation of the public improvements.
- C. A legal description of the parcel or parcels of real property that may utilize or benefit from the privately installed public improvements.
- D. An engineer's written estimate of the cost of the public improvements or an affidavit and documentation showing the actual cost of the privately funded public improvements (the documentation establishing the cost of the public improvements must be sufficient to satisfy the Naples City Manager or designee).
- E. The application for reimbursement shall be filed with the City Manager within six months after completion of the privately funded public improvements. The City shall not be obligated to attempt to recover a reimbursement for public improvements from any person or subsequent developer whose use of those privately funded public improvements begins prior to filing the application.
- F. The person seeking reimbursement for privately funded public improvements shall pay an application fee to Naples City of one hundred dollars (\$100.00).
- 3. The City may reject any incomplete application for reimbursement or any application not accompanied by the required filing fee. The application shall be signed by the person seeking reimbursement and notarized.

The Naples City Manager shall review the application, and if it is found to be complete, shall execute the application showing that it has been accepted and approved by Naples City. The City Manager shall, in addition, endorse the following statement contained upon the application:

Notice

Notice is hereby given to all persons having an interest in the real property described herein, that pursuant to Naples City Ordinance, Section 02-12 any persons developing the land described herein or constructing any improvements thereon are subject to an obligation to make reimbursement for a pro rata share of privately funded public improvements as described in the foregoing application. No person may make any improvements on or construct any structures on the described real property without receiving clearance from Naples City that the pro rata share of privately funded public improvements obligation has been satisfied.

02-12-003 LIMITATIONS ON REIMBURSEMENT REQUEST

No person shall be entitled to reimbursement for privately funded public improvements which do not provide a direct benefit to other land.

An applicant may not request reimbursement pursuant to this ordinance for any privately funded public improvements which were constructed prior to August 24, 2006. (date)

Reimbursement for privately funded public improvements shall be limited to public improvements lying within the boundaries of Naples City or public improvements which are owned by Naples City.

02-12-004 DUTIES OF APPLICANT FOR REIMBURSEMENT

After an application for reimbursement is filed with the City and approved by the City Manager, the applicant shall take responsibility to record or have recorded the original of the final approved application in the official records of Uintah County. The recording fee shall be the responsibility of the applicant.

After an application for reimbursement is filed, the applicant shall be under an affirmative duty to notify the City promptly in writing of any subsequent development of land covered by the reimbursement application of which the applicant has knowledge or reason to believe is using or benefiting from the private funded public improvements.

02-12-005 DUTIES OF LAND OWNERS/SUBSEQUENT DEVELOPERS

Any person intending to develop or subdivide any land or to construct any improvements upon any land which is described in an approved application for reimbursement, shall be under an affirmative obligation to notify the City Planning office when applying for a building permit or approval or authorization of any development or construction of the existence of the recorded reimbursement agreement and to make suitable arrangements for payment of the pro rata share of the privately funded public improvements which benefit that person's property.

Any person who makes any development or construction or connects to or otherwise utilizes or directly benefits from any privately funded public improvements covered by a reimbursement agreement which has been filed and approved by the City, shall be obligated to make reimbursement for the pro rata share of the privately funded public improvement utilized by or benefiting that person's project, development or property prior to commencing construction unless the application and City Manager have agreed to a deferred payment arrangement.

02-12-006 OBLIGATIONS OF CITY

When a properly completed application for reimbursement has been filed with the City along with the required filing fee, the Naples City Manager or designee shall promptly review the application for sufficiency and shall notify the applicant of any deficiencies or corrective action needed with respect to the application.

Once the application is approved, the Naples City Manager shall execute a duplicate original of the application and return it to the applicant with instructions to promptly record the approved application with the County Recorder for Uintah County. Verification of recordation shall be provided by the applicant to the Naples City Manager.

Naples City shall thereafter maintain a file including copies of the documentation provided to establish the cost of the privately funded public improvements and other information which may be necessary to determine the prorated share of those costs to be assessed against subsequent developers. The City shall maintain an index system showing property subject to reimbursement agreements.

When the City determines that a use of property covered by an approved reimbursement application will benefit from privately funded public improvements, the City shall determine the prorated share of the cost of those public improvements to be assessed against the owner or developer of the property and shall provide notice to that owner or developer. The City shall be under no obligation to approve or issue any building permit or approval for subdivision or other development of property until satisfactory arrangements have been made for reimbursement to the applicant for the prorated share of the privately funded public improvements.

If the City directly collects the prorated share of the improvements costs, the amount shall be forwarded to the applicant at the last known address of the applicant.

The City shall not be responsible for locating any beneficiary, survivor, assignee, or other success or interest entitled to reimbursement. Any collected funds unclaimed within two years after date of collection shall be forwarded to the Utah State Unclaimed Properties Office in the name of the applicant or the known assignee or beneficiary of those funds.

02-12-007 PERIOD OF TIME

A properly completed and recorded application for reimbursement shall be chargeable against and binding upon owner's and subsequent developers of the real property described in the application for a period of fifteen (15) years from date of recording. At the end of fifteen (15) years the applicant may apply for an extension of up to five (5) years upon filing an application for that purpose and

paying an additional one hundred dollar (\$100.00) fee. Prior to approving the extension agreement, the City shall determine whether the privately funded public improvements are in a condition or state of repair such that those improvements are likely to provide a benefit to adjoining property described in the original application.

02-12-008 VIOLATION

Any person or entity that receives the benefit of privately funded public improvements and is under obligation to provide a prorated reimbursement pursuant to the terms of this ordinance and fails and refuses to do so or otherwise violates this ordinance, shall be guilty of a class B misdemeanor. In addition to any fine, incarceration or other penalty which may be imposed for violation of a class B misdemeanor, a person or entity convicted of violation of this ordinance may be ordered by the court to make restitution in the amount of the prorated share of the privately funded public improvements as to which that person received the benefit.