

ORDINANCE NO. 11-5527

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 26-501 THROUGH 25-507; ENACTING, REVISING AND CLARIFYING THE CONDITIONS AND PROCEDURES FOR THE REIMBURSEMENT AND COMPENSATION OF COSTS INCURRED BY DEVELOPERS WHO CONSTRUCT, EXTEND OR REPLACE WATER, WASTEWATER, AND STORMWATER FACILITIES AS PART OF THE LAND USE DEVELOPMENT PROCESS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

**Section 1.** That section 26-501 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-501. Purpose.**

The intent and purpose of this article is to provide equitable procedures for 1) the reimbursement and compensation of a portion or all of the costs of constructing certain water and wastewater facilities, and 2) the reimbursement of a portion of the costs of constructing certain stormwater facilities to private parties who paid for the initial installation of those facilities. No person shall acquire any vested rights under the terms and provisions of this article.

**Section 2.** That section 26-502 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-502. Definitions.**

For the purposes of this article, the following words and phrases used herein are defined as follows:

*Compensation agreement* means a written document between the city and a developer outlining the conditions under which the developer may receive compensation from the city for general benefit water and wastewater facilities constructed by and initially paid for by the developer.

*Customer* means any person receiving water, and/or wastewater, and/or stormwater service either directly or indirectly from the city water, and/or wastewater, and/or stormwater system.

*Developer* means an applicant a person who 1) requests use of the city water and/or wastewater general benefit facilities to provide water and/or wastewater service to special benefit facilities, or 2) requests use of the city stormwater system either of which will be installed by the applicant person to serve properties owned by the applicant.

Extension/Construction means the act or process of extending or constructing water/wastewater special or general benefit facilities, or stormwater facilities, for the purpose of providing water and/or wastewater service to properties situated within the city's approved water or wastewater service areas.

General benefit facilities means water and wastewater system facilities that benefit all or a large number of customers, and/or that provide service to large areas, which may typically include but is not limited to, such type of facilities as water/wastewater treatment facilities, public water/wastewater mains larger than twelve (12) inches in diameter, water storage reservoirs, and water and wastewater pumping stations.

Limits of annexation map means the exhibit included with the Annexation Policy as adopted by the city and as may, from time to time, be revised.

Off-site special/general benefit facilities means special benefit facilities which are located between the existing water or wastewater system and the nearest boundary of the property for which service is to be provided.

Perimeter special benefit facilities means special benefit facilities which are located immediately adjacent to the exterior boundaries of the property for which service is to be provided.

Reimbursement agreement means a written document between the city and a developer outlining the conditions under which a developer may receive reimbursement from other property owners for a portion of water, and/or wastewater, and stormwater facilities constructed by and initially paid for by the developer.

Special benefit facilities means water or wastewater facilities which are owned and controlled by the city and which provide service solely to specific properties located within the city's water or wastewater service areas. Typical special benefit facilities include, but are not limited to, water lines twelve (12) inches or smaller in diameter, water booster pumping stations serving small areas, wastewater lines twelve (12) inches or smaller in diameter, and wastewater pumping stations serving small areas.

**Section 3.** That section 26-503 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-503. Requirement for payment of reimbursement fee.**

Any prospective customer owning property located outside a developer's subdivision and desiring to connect a service line or lines to any special benefit facility to which they did not financially contribute and which has been extended at the developer's expense, shall pay a reimbursement fee to the city. This fee shall be determined by the city and shall be based upon either the prospective customer's pro-rata fair share portion of the costs of the special benefit facility involved or upon some other cost formula established by agreement between the developer and the city at the time of approval of the developer's extension. This fee shall be in addition to and not in lieu of any fees which may be imposed by the city for refunding of general benefit facilities. This fee applies only to connections and does not apply to additional extensions of existing special benefit facilities properties located immediately adjacent to any such facilities and from which the properties receive direct service and/or for which a benefit can be directly determined

shall not include any interest charges.

**Section 4.** That section 26-504 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-504. Compensation by city.**

Developers are responsible for the cost of their fair share portion of all special benefit facilities that front the development or are necessary to bring service to the development. ~~In situations where no other property outside the development is participating in the cost of a project the city will participate in a proportionate share of the cost of eligible portions of the construction the developer extends a water/wastewater general benefit facility at his initial cost, that developer will be eligible to recoup those costs provided he meets the requirements contained herein and the compensation by the city is in accordance with an approved compensation agreement.~~

~~Compensation by the city must be made according to the city's approved water/wastewater extension policy and utilities fees practice. These policies require necessary funds to be included in the current, approved capital improvements projects budget in order to be eligible for compensation back to the developer. The construction must also comply with all city, state and federal laws, rules and regulations including, but not limited to, standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.~~

Developers may choose to proceed with an extension or replacement project without waiting for its inclusion in the capital improvements ~~projects program~~. In this case the developer is responsible for paying the entire cost of the construction. A compensation agreement will define the provisions covering payment of the city's portion of the project costs.

**Section 5.** That section 26-505 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-505. Reimbursement agreements.**

(a) Developers who meet the following conditions shall be entitled to reimbursement from revenues derived from the reimbursement fees established by this article:

(1) ~~Water/wastewater Special special benefit facilities and stormwater facilities, off-site or perimeter, which front and abut property not owned by the developer, must be extended by the developer at his expense. Water/wastewater general benefit facilities, off-site or perimeter, and serving developer's property located outside the "red area" as depicted in the latest version of the Limits of Annexation map and which front and abut property not owned by the developer, must be constructed by the developer at his expense. Costs of special benefit any such facilities which are financed through special improvement districts shall not be reimbursed.~~

(2) The extension of special benefit facilities must be for the purpose of serving property located within the corporate limits of the city. Costs of extensions of special

benefit facilities to serve property outside the city limits shall not be reimbursed.

(3) Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00) and may include engineering costs in addition to construction costs.

(4) Developer shall provide to the city sufficient verifiable cost data to determine the appropriate reimbursement fee to be charged to prospective customers under section 26-503 of this article.

(5) Developer shall enter into a standard reimbursement agreement with the city at the time the city approves the developer's application for extension of special/general benefit facilities or at the time of submittal of preliminary plans and specifications for stormwater facilities.

(6) Upon completion of the extension of the special benefit facilities, the developer must convey all right, title and interest in the facilities of the city.

(7) Developer shall, at all times, provide to the city a current address for purposes of mailing reimbursement payments to developer.

(8) Extension of special benefit facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the city, including but not limited to standards for design and construction of the facilities.

(9) Violation of any of the conditions listed in this section may be grounds for denial of any reimbursement to developer.

(b) All reimbursement payments to developers shall be subject to the following terms and conditions:

(1) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in this article. Reimbursement payments are limited to reimbursement fees actually collected, less all administrative costs incurred by the city. In no event will reimbursement payments exceed the actual cost to the developer of extending the special benefit facilities.

(2) Reimbursement fees paid to the city shall be accumulated and paid to developer annually on each November first following acceptance of the special benefit facilities by the city.

(3) Reimbursement payments shall not include any interest charges.

(4) Reimbursement payments to developer shall be limited to reimbursement fees paid to the city on or before the seventh tenth (10<sup>th</sup>) anniversary of the date of acceptance of the special benefit facilities by the city. Any reimbursement fees paid to the city after said anniversary date shall be retained by the city and used for construction of additional water, and/or wastewater, and stormwater system facilities.

**Section 6.** That section 26-506 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-506. Compensation agreements.**

(a) Developers who meet the following conditions shall be entitled to compensation by the city:

(1) Water/wastewater general benefit facilities must be constructed by the

developer at his expense.

(2) a) Property to be served by the extension shall be located, at the time of request for service, within the "red area" as defined and shown on the Limits of Annexation map.

b) Property located outside the "red area" shall not be eligible for compensation but will be eligible for reimbursement under section 26-505 of this article. The developer's property and any other property in this category subject to payment of a reimbursement fee and immediately served by the extension shall receive a reduction in the water and/or wastewater system development fee. The reduction shall be the amount commensurate with the general benefit facilities portion of the system development fee.

(3) Developer shall provide to the city sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the city that all construction was completed according to the approved plans and specifications.

(2) (4) Developer shall enter into a compensation agreement with the city at the time the city approves the developer's application for extension of water and/or wastewater facilities or, in the case of a replacement project, prior to at the time of submittal of preliminary plans and specifications by the developer.

(3) (5) Upon completion of the extension or replacement of the water and/or wastewater facilities, the developer must convey all right, title and interest in the facilities to the city.

(4) (6) Extension or replacement of water and/or wastewater facilities must be done in compliance with all city, state and federal laws, rules, and regulations including, but not limited to, selection of consulting engineer standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.

(b) All compensation payments to developers shall be subject to the following terms and conditions:

(1) The extent, timing, and manner of the city's participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the city's water/wastewater extension policy, the city's utilities fees practice, and the developer's compliance with city, state and federal laws, rules, and regulations. Extensions or replacements not eligible for compensation according to these city policies and practices must be constructed by the developer at his expense.

(2) Developer shall, at all times, provide to the city a current address for purposes of mailing compensation to developer.

(3) Compensation is limited to construction and engineering costs attributable to water and/or wastewater facilities described in the compensation agreement, less all administrative costs incurred by the city. In no event will compensation exceed the actual cost to the developer of extending or replacing the water and/or wastewater facilities.

(4) Compensation shall not include any interest charges.

**Section 7.** That section 26-507 of the Billings Montana City Code be amended so that such section shall read as follows:

**Sec. 26-507. Applicability.**

The provisions of this article shall apply only to special benefit facilities constructed after the effective date of this article [Ordinance No. 85-4641 adopted May 6, 1985, effective June 5, 1985] except in those cases where the city has entered into a written agreement with the developer which provides that any reimbursement procedure adopted by the city prior to this article will be applicable retroactively to the development which is the subject of that agreement.

**Section 8. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

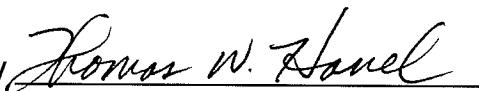
**Section 9. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 10. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 13th day of December 2010.

PASSED, ADOPTED and APPROVED on second reading this 10<sup>th</sup> day of January 2011.

CITY OF BILLINGS

By   
THOMAS W. HANEL, Mayor

ATTEST:

By Cari Martin  
CARI MARTIN, City Clerk

