

ORD 6742

EXHIBIT A

Chapter 3.25 PAYBACK AGREEMENTS

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3.25.010	Purpose.

The purpose of this chapter is to provide a mechanism to reimburse an eligible applicant and/or the city for costs associated with the construction of public street or public utility system improvements. This chapter is intended to implement the provisions of Chapters 35.72 and 35.91RCW as presently adopted or as may be subsequently amended. (Ord. 6696 § 1 (Exh. A), 2018; Ord. 6512 § 1, 2014.)

3.25.020 Definitions.

A. Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section have the indicated meanings.

B. “Applicant” means the owner, developer, or building permit applicant who is required by any ordinance of the city to construct improvements as a prerequisite of property development. Street or utility improvements constructed in order to comply with the city’s subdivision code, zoning code, comprehensive plan, and ACC Title 12 or 13 are declared to be prerequisites to further property development for the purposes of RCW 35.72.010 and 35.91.020(1)(a).

C. “Assessment reimbursement area” means all real properties that will benefit from a street or utility system improvement.

D. “Connection” for utility services means the initial provision of water, sewer or storm drainage service for an individual property after the issuance of an appropriate permit under Chapter 13.06 or 13.20 ACC, where the property benefits from utility services as described in ACC 3.25.100, and which results in the creation of a utility payment

account with the city, and service fees being assessed under that account. Connection does not include the physical tie-in or attachment of mainline water, sewer, or storm drainage infrastructure to the city's system or to infrastructure being dedicated or conveyed to the city after construction of that infrastructure that is required under Chapter 13.40 ACC.

E. "Facility (FAC) extension agreement" means an agreement between the city and the developer, as defined in Chapter 13.40 ACC, for the city to accept the public portions of facilities constructed by the developer.

EF. "Payback agreement" means contracts authorized by Chapters 35.72 and 35.91 RCW and this chapter, as presently adopted or as may be subsequently amended, for transportation or utility system improvements.

FG. "Transportation system improvements" means those improvements to the public street transportation facilities including, but not limited to, paving, installation of curbs, gutters, storm drainage, sidewalks, street lights, right-of-way landscaping, traffic signals, and traffic control signs and markings.

GH. "Utility system improvements" means those improvements to the public water, sewer, or storm drainage systems including, but not limited to, pumping stations, conveyance, distribution and service lines, structures, storm drainage storage and treatment ponds/vaults, and disposal plants, water mains, hydrants, reservoirs, wells, or appurtenances to those systems. (Ord. 6696 § 1 (Exh. A), 2018; Ord. 6512 § 1, 2014.)

I. "Completion" means city acceptance of all improvements constructed as part of the FAC extension agreement.

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3.25.060 Application – Process.

A. For each public street or utility system improvement the applicant is required to construct that is determined by the city engineer to be eligible for a payback agreement, the applicant may apply to the city to establish a payback agreement. ~~The For eligible projects, a complete payback agreement~~ application must be received ~~not later than 10 business days after the date that the city's letter of eligibility is postmarked before~~ execution of the FAC extension agreement, or the applicant will be deemed to have waived the right to request a payback agreement.

B. The application to enter into a payback agreement must include all the following items:

A1. A nonrefundable application fee in the amount specified in the city's fee schedule.

~~B~~2. An estimate of all costs of the project including, but not limited to, design engineering, permitting, property acquisition, construction engineering, contract administration, surveying, and construction costs associated with the system improvements.

~~C~~3. A map and legal description identifying the proposed boundaries of the assessment reimbursement area and each separately owned parcel within that area and including the applicable amount of area and/or front footage of the property. The map will identify the location of the project in relation to the parcels of property in the area.

~~D~~4. A preliminary assessment reimbursement roll stating the proposed assessment for each separate parcel of property within the proposed assessment reimbursement area as determined by apportioning the total project cost on the basis of the benefit of the project to each parcel of property within the area. The payback reimbursement charge to other properties will be based on the total project cost, figured on a front foot or area assessment basis, or other equitable method, as determined by the city, or any combination of these methods at the reasonable discretion of the city engineer.

~~E~~5. A complete list of record owners of property within the proposed assessment reimbursement area certified as complete and accurate by the applicant and which states names and mailing addresses for each owner.

~~F~~6. The applicant's acknowledgement that a street payback agreement may extend for a period of up to 15 years (unless extended as provided for by statute), and a utility payback agreement may extend for a period of not less than 20 years (unless extended as provided for by statute), from the date of final acceptance by the city and the recovery shall be assigned to run with the land.

~~G~~7. The applicant's acknowledgement that approval of the payback agreement will be conditioned on the applicant agreeing to waive any claims for liability of the city in establishment and enforcement of payback agreements, including an acknowledgement that the city is not responsible for locating a beneficiary or survivor.

~~H~~8. The applicant's acknowledgement that it must provide sufficient security to ensure to complete the improvements. (Ord. 6696 § 1 (Exh. A), 2018; Ord. 6512 § 1, 2014.)

3.25.070 Costs eligible for reimbursement.

A. The city council may provide for the reimbursement of all or part of the costs advanced by the city funds and/or applicant for the street or utility system improvements, including:

~~A~~1. The design engineering, permitting, property acquisition, construction engineering, contract administration, surveying, and construction costs associated with the street or utility system improvements.

~~B~~2. The cost of all advertising, mailing and publishing of notices.

~~C~~3. The cost of legal services and any other expenses incurred by the city in connection with the construction or financing of the improvement, including the issuance of any bonds.

~~D~~4. City costs of administering the agreement.

~~E~~5. Outside professional services as applicable.

B. Costs eligible for reimbursement to the applicant will not include frontage street or utility improvements that would have been normally required of the applicant per Chapter 12.64A, 13.08, or 13.40 ACC. (Ord. 6696 § 1 (Exh. A), 2018; Ord. 6512 § 1, 2014.)

C. Applicant waives the right to a payback agreement for any improvements for which final costs are not submitted to the City within 120 days after completion.

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3.25.090 Contract execution and recording.

A. Following completion of the facility extension and receipt of final costs to be included in the payback agreement, the city will provide the applicant with the payback agreement for execution.

AB. The applicant will provide an executed copy of the payback agreement to the city. The applicant will not be allowed to make any further changes to the executed payback agreement unless the changes are mutually agreed to by the City.

C. Within 90 days of receipt of the executed payback agreement, the city engineer will request that the city council schedule a public hearing.

D. Following the public hearing, the city council will consider the payback agreement.

BE. The payback agreement will be recorded in the King or Pierce County department of records, as appropriate. Once recorded, the payback agreement is binding on property owners of record within the assessment area who are not party to the agreement. (Ord. 6696 § 1 (Exh. A), 2018; Ord. 6512 § 1, 2014.)

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