

ORDINANCE NO. 2602

AN ORDINANCE CREATING CHAPTER 17.56 OF THE MOSES LAKE MUNICIPAL CODE ENTITLED "REIMBURSEMENT AGREEMENTS"

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Moses Lake Municipal Code Chapter 17.56 entitled "Reimbursement Agreements" is created as follows:

- 17.56.010 Application Authorized – Purpose – Term: Any developer utilizing private funds to install infrastructure (street, water, or sewer [sanitary and/or storm]) improvements and appurtenances may apply to the city to establish a latecomer agreement for recovery of a prorated share of the cost of constructing said public improvement from other properties that will later derive a benefit from said improvements. This chapter is intended to apply to all street system improvements and all utility system improvements where the construction of such improvements are the result of a City ordinance or ordinances that require such improvements as a prerequisite to property development. No reimbursement agreement/latecomers' agreement shall extend for a period longer than fifteen (15) years from the date of final acceptance by the City unless a longer period is allowed pursuant to RCW 35.72.020 or 35.91.020. The City Council shall have discretion to authorize or not to authorize latecomer agreements on a case-by-case basis and to determine the length of the term of any latecomer agreement.
- 17.56.020 Rights and Non-Liability of City: The City has discretion and reserves the right to refuse to enter into any latecomer agreement or to reject any application therefor. All applications for latecomers' agreements shall be made on the basis that the applicant releases and waives any claims for any liability of the City in establishment and enforcement of latecomer agreements. The City shall not be responsible for locating any beneficiary or survivor entitled to benefits by or through latecomer agreements.
- 17.56.030 Application Requirements: All applications for latecomer agreements shall be on forms approved and established by the City and reviewed and approved by the City Attorney. Applicants for latecomer agreements shall comply with the following procedures as a prerequisite to a latecomer agreement with the City:
- A. The owner desiring to contract with the City shall notify the City Engineer, in writing, at least thirty (30) days prior to construction of the facilities, of the owner's request to enter into a latecomer agreement with the City.
 - B. The notice shall contain the following information:
 1. The description of the facilities to be installed.
 2. The description of the area where the facilities are to be installed and a map showing the location thereof.
 3. The cost estimate of the facilities.
 - C. The owner shall submit the final construction costs to the City Engineer within thirty (30) days from the date of final approval of the construction by the City. The matter shall then be submitted to the City Council which shall determine whether or not to enter into a latecomer agreement with the owner. If the project is approved for a latecomer agreement by the City Council, the city shall have ninety (90) days thereafter to finalize the agreement. In the event the owner fails to comply with the time limitations set forth in this chapter, then and in that event, the owner shall have waived the owner's right to enter into a latecomer agreement with the City.
 - D. In addition to the amounts agreed to be collected by the City, the City shall charge a sum equal to fifteen percent (15%) of the agreed amount to defray the cost of labor, bookkeeping and accounting.

- E. The ownership of all water and sewer main lines installed on private property shall be conveyed to the City and the owner shall grant the City an easement therefor. All deeds and easements for said main line shall be submitted to the City within sixty (60) days of the completion of construction. The ownership of all other improvements under the latecomer's agreement shall be conveyed to the City by appropriate deed and/or conveyance document within sixty (60) days of completion of construction.

17.56.040 Eligibility of Applicants: In order to be eligible for processing of latecomer agreements, applicants for latecomer agreements shall be in compliance with all City ordinances, rules, and regulations.

17.56.050 Procedures for Reimbursement Agreements:

- A. If a reimbursement agreement is requested, the property owner shall submit project plans and a site plan, map or diagram of the proposed benefitted area prepared by a licensed professional engineer, ownership reports on properties within the proposed benefitted areas, a cost estimate for the project based upon the plans of a licensed civil engineer from which reimbursable costs shall be estimated, and such other information as the City may require.
- B. Property owners requesting a reimbursement agreement shall submit, along with the application, a non-refundable payment in the amount of one thousand five hundred dollars (\$1,500) to be applied to the City's legal, engineering and administrative costs (including but not limited to staff time, and costs for title reports, appraisers, or other costs) associated with preparing the reimbursement agreement, which costs shall be included as reimbursable costs in the reimbursement agreement; provided, that whenever city engineering, legal, and administrative costs exceed the payment required herein, the City shall not process the application until such costs have been paid in full.
- C. The City Engineer will formulate an assessment reimbursement area (benefit area) based upon a determination of which parcels did not contribute to the original cost of such infrastructure improvement and which connect to or specially benefit from such infrastructure.
- D. The City Engineer, based on information submitted by the owner, will estimate pro rata share of costs. The City Engineer may require engineering costs or construction bids to be provided.
- E. The City Engineer, in the City Engineer's discretion, may utilize the application fee to pay the costs of an appraiser to be retained by the City to assist the City Engineer in formulating an assessment reimbursement area.
- F. The preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options, shall be forwarded by first class mail to the property owners of record as shown on the records of the Grant County Assessor within the proposed assessment area. A hearing shall be held before the City Council, notice of which shall be given to all affected property owners at least twenty (20) days in advance of the City Council meeting. At the hearing, the City Council determines whether to accept, reject, or modify the proposed reimbursement agreement. If the City Council accepts, it shall establish the reimbursement area; provided, that the City Council may only increase the reimbursement area upon new notice to the owners of the affected property. Improvements constructed subsequent to preliminary approval and prior to the final City Council action on a proposed agreement are done at the owner's or developer's own risk. The approval of a preliminary latecomer's agreement does not create or vest any right to a final latecomer's agreement.
- G. Prior to commencing construction of the project, the owner shall submit a construction bid on forms provided by the Municipal Services Department based upon City-approved plans to the City. Upon completion of the project, a reasonable pro rata share of project costs shall be established by the City, which shall then notify owners of the benefitted properties of the amount of reimbursement connection charges against their property and the date the reimbursement agreement shall be presented to the City Council for public hearing. On the date scheduled, the City Council shall hear from affected parties and thereafter set the terms of the reimbursement agreement and maximum amount and terms of reimbursement from affected properties. The decision of the City Council shall be final and determinative.

- H. The latecomer agreements must be recorded in the Grant County Auditor's office within thirty (30) days of the final execution of the agreement. It shall be the sole responsibility of the latecomer applicant to record said agreement.
- I. Once recorded, the latecomer agreement shall be binding on owners of record within the assessment area who are not party to the agreement.
- J. The latecomer applicant shall be solely responsible for keeping the City informed of their correct mailing address and contact information by providing the City with written notice thereof at least every two (2) years following execution of the latecomer agreement.

17.56.060 Enforcement Responsibility and Future Services: It shall be the responsibility of the owner of the latecomer's agreement to monitor, enforce and notify the City of any connections to improvements which come within the terms of the latecomer's agreement. The City will use its best efforts to collect latecomer's fees but will not accrue any liability for failure to collect fees due. The City has no obligation to provide notice of the latecomer's agreement to any party other than as provided in this chapter. Neither preliminary nor final approval of a latecomer's agreement shall be construed to vest or grant the right to the extension or allocation of water and/or sewer to properties affected by the latecomer's agreement.

17.56.070 Relief – Similar Facilities: The City, through its designated agent, may relieve a parcel of a latecomer's fee if the property has a benefit from either (but not both) of two (2) similar facilities. Relief shall be based upon sound engineering and policy justifications as to which facility(ies) benefit and/or are utilized by the parcel. Absent such justifications, the City shall give the applicant the choice of facilities to utilize. The assessment due shall be that associated with the utilized facility.

17.56.080 Severability: If any section, subsection, sentence, clause phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or work of the ordinance codified in this chapter.

Section 2. Effective date. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on January 11, 2011.



 Jon Lane, Mayor

ATTEST:



 Ronald C. Cone, Finance Director

APPROVED AS TO FORM:

 James A. Whitaker, City Attorney