

Chapter 3.10 Reimbursement for Public Improvements

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3.10.010 Definitions. The following words and expressions shall have the following meanings under this chapter:

1. Person means an individual or any legal entity, including the City of Mosier.
2. Sewer Improvement means a sewer or sewer line improvement conforming to City standards including but not limited to:
 - a. Extension of a sewer line to property other than that owned by the person financing the improvement so that sewer service can be provided to that property without further extension of the line; and
 - b. Construction of a sewer line larger, deeper, or of greater capacity than necessary to serve the property of the person financing the improvement in order to provide future service to other properties without the need to reconstruct the line, or constructing additional, deeper or parallel lines.
3. Street Improvement means a street or street improvement conforming to City standards and including but not limited to streets, surface water drainage facilities in conjunction with streets, curbs, gutters, sidewalks, bike and pedestrian pathways, traffic control devices, street trees, lights and signs and public right-of-way or easement acquisition.
4. Surface Water Management Improvement means a surface water quality or quantity facility conforming with City standards including but not limited to:
 - a. Extension of a surface water management line to property other than that owned by the person financing the improvement so that surface water management service can be provided to that property without further extension of the line;
 - b. Construction of a surface water management line larger, deeper, or of greater capacity than necessary to serve the property of the person financing the improvement in order to provide future service to other properties without the need to reconstruct the line;
 - c. A detention facility with the capacity to serve upstream properties; and
 - d. A water quality facility with capacity to serve upstream properties.
5. Water Improvement means a water or water line improvement conforming with City Standards including but not limited to:

a. Extension of a water line to property other than that owned by the person financing the improvement so that water service can be provided to that property without further extension of the line; and

b. Construction of a water line larger, deeper, or of greater capacity than necessary to serve the property of the person financing the improvement in order to provide future service to other properties without the need to reconstruct the line, or constructing addition, deeper or parallel lines.

6. Zone Connection Charge means the charge imposed pursuant to MMC Article 3.10 designed to reimburse a person for the costs of financing a sewer, street, surface water management or water improvement. The Zone Connection Charge is not intended to limit or replace, and is in addition to, any other existing fees or charges collected by the City.

7. Zone of Benefit means the area benefited by the construction of sewer, water, surface water management or street improvements financed in whole or in part by a person without the formation of a local improvement district. A Zone of Benefit may be formed in conjunction with a local improvement district where a person finances a share of the cost of the improvement that is larger than the share that would result from a uniform application of the district assessment formula to property located in the district and owned by the person.

3.10.020 Purpose and Scope. MMC Article 3.10 provides a method to reimburse an entity or the City that finances the construction of a sewer, water, surface water management or street improvement in whole or in a disproportionately large part. It is intended to be used to mitigate the cost of financing such public improvements by distributing those costs to other benefited property owners at the time those benefited property owners connect to or make use of the improvement.

3.10.030 Initiation of Proceedings.

1. Any person may apply to the City to form a Zone of Benefit where the person chooses or is required as a condition of permit approval to construct a street, sewer, surface water management or water improvement that includes additional or oversized improvements that would or could provide service to property other than property owned by the applicant. Examples include but are not limited to:

- a. Full street improvements instead of half street improvements;
- b. Construction of off-site sidewalks or pathways;
- c. Connection or extension of street sections for continuity;
- d. Extension of water, surface water management or sewer lines.
- e. Oversizing of water, surface water management or sewer lines or surface water quality or detention facilities if the oversizing costs are not reimbursed by the City.

2. The application shall be in writing and shall be accompanied by a processing fee established by resolution of the City Council sufficient to cover the administrative and notice costs of processing an application pursuant to this ordinance. The application shall include the following:

- a. A description of the location, type, size, and cost of the public improvement.
- b. A narrative explaining why the applicant believes all or part of the cost of the improvement is eligible for reimbursement pursuant to this ordinance.

c. A map showing the properties to be included in the proposed district, including the City Zoning designation, the square footage or frontage of the property or properties and identification of the properties owned by the applicant, if any.

d. The cost of the improvements to be reimbursed. If the application is filed after construction, the application shall include the actual costs of construction as evidenced by a contract, receipts, bids or other similar documents. If the application is filed prior to construction, the application shall include the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials or other similar evidence satisfactory to the City engineer.

e. The date that the City accepted the public improvements or the date that the improvements are estimated to be complete.

3. An application to form a Zone of Benefit may be made no later than three months after completion and acceptance of the street, sewer, surface water management or water improvements. The City engineer may waive this deadline if the applicant demonstrates that the delay was not created by the applicant and was created by unanticipated or unforeseen circumstances

3.10.040 City engineer's Report.

1. The City engineer shall review a request for the establishment of a zone of benefit and determine whether a zone should be established. The City engineer may request the submittal of any other relevant information from the applicant in order to assist in this evaluation. If the Engineer determines that formation of a Zone of Benefit is appropriate, the Engineer shall prepare a written report that:

a. Explains why the applicant is qualified for reimbursement pursuant to MMC Article 3.10.

b. Establishes the area of the zone of benefit, the zone formation date and the date when the right of reimbursement ends.

c. Sets forth the actual or estimated cost of the street, water, surface water management or sewer improvements and the portion of the cost for which the applicant should be reimbursed pursuant to subsection 2 of this section.

d. Establishes a methodology for spreading the cost among the properties within the Zone of Benefit and, where appropriate, defining a "unit" for applying the reimbursement charge to property that may, with City approval, be partitioned, adjusted or subdivided at some future date. The methodology should consider the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate making principles employed to finance public improvements, and other factors deemed relevant by the City engineer. Prior contributions by property owners shall only be considered if the contribution was for the same type of improvement and at the same location.

e. Establish the reimbursement charge for the zone.

f. Direct that a certificate of payment and right of reimbursement be issued to the zone requestor.

2. Determining Reasonable Actual Costs. The applicant shall not be entitled to reimbursement for any costs in excess of reasonable actual costs. If the Zone of Benefit is formed before actual costs are known, the City engineer's report may be based on estimated costs. If estimated costs are used, the methodology or the certificate of payment or both shall provide for a recalculation of the cost no later than three months after completion and acceptance of the improvement by the City. An applicant shall demonstrate actual costs by submitting contracts,

invoices or such other documentation as the City engineer deems sufficient. Actual costs shall not be deemed reasonable if the City engineer determines that such costs significantly exceed prevailing market rates for similar projects. In such a case, the City engineer may reduce the reimbursable costs to the prevailing market rate for similar projects. In addition, the following costs shall not be subject to reimbursement:

- a. Costs for that portion of the improvement that benefits the applicant's own property.
- b. Costs for improvements that are not dedicated to and accepted by the City as a public improvement.
- c. Costs for a public improvement that is required as condition of development approval, except in cases where the nature and degree of the public improvement is disproportionate to the impacts of the development or where the City desires an oversized or additional improvement beyond that which is roughly proportional to the impacts of the development.
- d. Costs other than the costs of construction, including the acquisition and condemnation costs of acquiring additional right-of-way and/or easements, the actual cost of permits, engineering and legal services as demonstrated by invoice, and the estimated annual percentage increase in such costs over the 10 years that the Zone of Benefit will be in effect.
- e. Costs for relocation of electrical, telephone, cable television or natural gas utility relocation benefiting an applicant's property.
- f. Costs for extra work or materials required to correct deficiencies in construction to bring the improvement to City Standards.
- g. Costs for sanitary sewer, surface water management facilities, water or street improvements that are the minimum size necessary to meet City standards and serve an applicant's property.
- h. Costs for a minor street realignment, except for the cost of right-of-way acquisition beyond the limits of the applicant's frontage along the improved street.

3. If the City engineer determines that a Zone of Benefit should not be formed, the Engineer shall prepare a written report explaining why the City engineer believes that formation of the Zone of Benefit would be inappropriate or does not qualify pursuant to MMC Article 3.10. The report shall be mailed to the applicant along with a written notice that the City engineer's determination may be appealed to the City Council by filing a written notice of appeal within fourteen days of the date of mailing the report and notice. The notice of appeal shall be in writing, shall explain why the City Council should reverse or modify the decision of the City engineer, and shall be accompanied by payment of the applicable appeal fee, if any is established by resolution of the City Council. If a notice of appeal is filed in compliance with all of these requirements, a hearing shall be held and a decision rendered by the City Council as provided in MMC 3.10.050(4).

3.10.050 Formation of Zone of Benefit.

1. Notice of Proposed Formation. Following completion of the City engineer's Report, notice of formation of the proposed Zone of Benefit shall be mailed by regular mail to the applicant and to all property owners within the proposed Zone of the Benefit as shown on the most recent assessment roll in the possession of the county assessors office. Notice shall be deemed effective on date of mailing. Failure to receive notice by the applicant or any affected property owner shall not invalidate or otherwise affect formation of the Zone of Benefit. The notice shall:
 - a. State that a Zone of Benefit has been proposed that includes the property of the person receiving notice.

b. Briefly describe the Zone of Benefit, the street, water, sewer or surface water management improvement to be reimbursed, the amount of the Zone Connection Charge, and the circumstances under which the Charge must be paid.

c. Include a copy of the City engineer's report.

d. State that any property owner within the Zone of Benefit may file a written request for a hearing on formation before the City Council by filing a written request for a hearing as provided in subsection 2 of this section with the City Recorder within 14 days of the date of notice.

e. State that unless a written request for hearing is filed within the required time period, the Zone of Benefit shall be deemed approved on the 15th day following the date of notice.

2. Filing a Request for Hearing. Any property owner within a proposed Zone of Benefit may request that a hearing on the proposed formation be held before the City Council by filing a written request for hearing within fourteen days of the date that notice is provided pursuant to subsection 1 of this section. No fee shall be charged for filing a request for hearing. The written notice shall contain the name and address of the person requesting the hearing and a brief statement explaining why the person believes that the proposed Zone of Benefit should be modified or not be formed.

3. Modification. Upon receipt of a written request for hearing, the City Manger may either reconsider and/or modify the Zone of Benefit as proposed in the City engineer's Report or may forward the proposed request to the Mayor to schedule for a public hearing. If the City engineer decides to modify the proposed zone, notice of the modification shall be mailed as provided in subsection 1 of this section, which modification is subject to a request for hearing as provided in subsection 2 of this section.

4. Hearing. The Mayor shall schedule a public hearing on the proposed Zone of Benefit within a reasonable time following the request. Notice of the Hearing shall be mailed by regular mail to the applicant and all property owners who received notice of the proposed Zone of Benefit as provided in subsection 1 of this section. Notice shall be mailed at least 14 days before the date of the hearing. The Notice shall set forth the time, date and place of the public hearing and shall include the information required by subsection 1(a) through 1(c) of the section. The notice shall also state that any person may appear and be heard. At the scheduled time, the Mayor shall open the public hearing and shall take testimony generally on the proposed Zone of Benefit. The Mayor may impose reasonable time limits on testimony. Following close of the public testimony, the Mayor shall bring the matter back to the table for deliberation and decision. The Council shall make a preliminary decision to approve, reject or modify the proposed Zone of Benefit as set forth in the City engineer's report. The preliminary decision shall be followed up by adoption of a formal written Order. An order approving formation of Zone of Benefit shall incorporate the City engineer's Report including any modifications, if any, made by the City Council. An order reversing a decision of the City engineer not to form a Zone of Benefit pursuant to MMC 3.10.040(3) shall set forth the information required in MMC 3.10.040(1)(a) through (f).

5. Formation. The Zone of Benefit shall be deemed to be formed on the fifteenth day following the notice provided in subsection 1 of this section if no request for hearing is filed, on the fifteenth day following the second notice if the Zone of Benefit is modified pursuant to subsection 3 of this section, or on the date of adoption of the City Council's written order if a hearing is requested and held. Notice of formation shall be mailed by regular mail to the applicant and to all property owners within the proposed district. The notice shall include the date of formation, shall state that a copy of the final City engineer's report or Council Order is available, shall include a telephone number of the City Recorder through whom a copy can be

requested, and shall include a short explanation of when the property owner is obligated to pay the Zone Connection Charge and the amount of the Charge.

6. Recordation. The City Recorder shall cause notice of the formation and nature of the Zone of Benefit to be filed in the office of the county recorder so as to provide notice to potential purchasers of property within the district. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the formation or the obligation to pay the Zone Connection Charge.

7. Challenge to Formation. No legal action intended to challenge or contest the formation of the Zone of Benefit or the methodology or amount of the Zone Connection Charge shall be filed after 60 days following formation of the Zone of Benefit pursuant to subsection 5 of this section.

3.10.060 Certificate of Payment and Right to Reimbursement. The certificate of payment and right to reimbursement is a contract right between the City and the requestor. The certificate shall at a minimum identify the person receiving the right of reimbursement, the reimbursed amount per unit, the area of the zone of benefit, the date of zone formation and the date upon which the right to reimbursement ends. The requestor's right to reimbursement is assignable and transferrable after written notice is delivered to the City advising the City to whom future payments are to be made.

3.10.070 Obligation to Pay Zone Connection Charge, Penalty.

1. An owner of property within any zone of benefit shall pay to the City, in addition to any other applicable fees and charges, the zone connection charge established in the City engineer's written report when any of the following events occur within 10 years from the zone formation date established in the Engineer's written report;

a. The property owner receives final approval for a development permit to subdivide or partition property located within the zone, or

b. A use of property is expanded to create additional "units," as that term is defined in the Engineer's report for the particular zone. The term "unit" is not limited to residential uses.

c. A property owner connects to the sewer line or water line or makes use of the surface water management or street improvement. As used in this subsection, "makes use of the surface water management improved" means installation of an improvement that substantially increases impervious surface on the property at the time of or following construction of the surface water management improvement for which the Zone of Benefit has been formed. As used in this subsection, "makes use of the street improvement" means installation of an improvement or changing the use of the property at the time of or following construction of the street improvement that increases traffic or congestion on the road improvement for which the Zone of Benefit was formed.

2. The charge is due and payable as a precondition of receiving the first City permit applicable to the development activity undertaken, or, in the case of a connection to a line, as a precondition of receiving the connection permit.

3. The connection charge may be paid in installments in the same manner as a systems development charge pursuant to MMC xx.
4. A person who becomes obligated for payment of the zone connection charge as the result of connection to a line constructed through the local improvement district process and who owns property within the district upon which an assessment is levied may be assessed for the zone connection charge as an added portion of the assessment levied through the improvement district.
5. The failure to pay the zone connection charge when due is a civil violation.