

RESOLUTION NO. 05-18234

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS RELATING
TO SPECIAL IMPROVEMENT DISTRICTS; AMENDING RESOLUTION 87-15592

BE IT RESOLVED BY THE CITY COUNCIL (THE COUNCIL) OF THE CITY OF BILLINGS (THE CITY):

SECTION 1. Recitals.

1.01. Objectives of Policy.

It is the intent of the City of Billings, Montana, to establish a policy regarding the creation of special improvement districts within the City and the issuance of special improvement district bonds therefore so as to provide for the orderly and economical construction and financing of necessary public improvements within the City and to minimize the risks to the taxpayers in the City as a result of unpaid or delinquent assessments.

1.02. Findings. The Council hereby finds that:

(a) The use of special improvement districts is an important and necessary method of constructing Improvements in the City of Billings in existing developed neighborhoods and business districts as well as in new residential and commercial subdivisions; and

(b) Special improvement districts have been extensively used by real estate developers to finance the costs of water, sewer, curbs and gutters, streets, roads and park improvements associated with the development of residential and commercial subdivisions within the City; and

(c) Such use of special improvement districts and the issuance of special improvement district bonds secured by the City's Revolving Fund have provided a significant economic benefit to the developers of such subdivisions; and

(d) The rate of delinquent special improvement assessments for special improvement districts on undeveloped land is significantly greater than that for special improvement districts on developed land; and

(e) The high incidence of the failure or inability of such developers to pay assessments levied against the property within such subdivisions while in their ownership has exposed the City's Revolving Fund and ultimately the City's general fund and taxpayers to risks that are not warranted under the circumstances; and

(f) In order to establish a policy that allows the use of special improvement districts, and of improvement district bonds by the developers of new residential and commercial subdivisions and at the same time provides protection for the City's Revolving Fund and its general taxpayers, it is necessary to establish a policy that distinguishes between and establishes different standards for special improvement districts created within existing developed neighborhoods and special improvement districts created for undeveloped residential and commercial subdivisions.

SECTION 2. Definitions.

All capitalized terms used herein shall have the meanings given to them in this section, unless otherwise indicated or if not defined herein, the meanings given to them in Title 7, Chapter 12, Parts 41 and 42.

Code shall mean the Internal Revenue Code of 1986, and any regulations and rulings promulgated thereby.

Costs of Improvements shall mean those incidental expenses described in Section 7-12-4169, M.C.A. and those costs described in Section 7-12-4104, M.C.A.

Costs of Issuance shall mean all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, sale and issue of the Bonds, including the City's fees, bond discount fees,

costs of preparation and reproduction of documents, initial fees and charges of Trustee, if any, legal fees and charges, fees and charges for preparation, execution and safekeeping of the Bond.

Developed District shall mean a Special Improvement District in which 51% or more of the costs of the district will be assessed against lots, tracts or parcels which have occupied structures located thereon.

Developer shall mean an individual or a group of individuals, a corporation or a partnership requesting the creation of a special improvement district for an Undeveloped District.

Direct Service Facility Improvements shall mean those improvements that are designed to be part of an established system of city service or improvement facilities and which are necessary in order for the property within a proposed special improvement district to be directly served by the City service. Direct Service Facilities do not include off-site improvements or lateral collection or distribution facilities such as trunk sewer lines and trunk water mains.

Improvements shall mean public improvements authorized by Section 7-12-4102, M.C.A. to be constructed and financed through the creation of Special Improvement Districts.

On-Site Improvements shall mean those Improvements located within the boundaries of a Special Improvement District.

Off-Site Improvements shall mean those Improvements located outside the boundaries of a Special Improvement District, but of special benefit to the properties within the District.

Revolving Fund shall mean the fund established by the City pursuant to Section 7-12-4221 et seq.

Undeveloped District shall mean a Special Improvement District in which less than 51% of the costs of the district will be assessed against lots, tracts or parcels which have occupied structures located thereon.

Special Improvement Districts shall mean those districts established pursuant to Title 7, Chapter 12, Part 41 and 42, M.C.A. for the purpose of constructing and installing improvements for the special benefit of properties located within such districts.

Special Improvement District Bonds shall mean bonds issued by the City pursuant to Title 7, Chapter 12, Parts 41 and 42, M.C.A. for the purpose of financing Improvements within Special Improvement Districts and paying incidental costs, as defined in Section 7-12-4101, M.C.A. related to the creation of the districts and the issuance of the Bonds.

SECTION 3. Creation of Special Improvement Districts and Issuance of Bonds Secured by the Revolving Fund.

3.01. Creation of Special Improvement Districts and Issuance of Bonds Secured by the Revolving Fund. In accordance with the provisions of Title 7, Chapter 12, Parts 41 and 42, the City will create special improvement districts for financing Improvements upon a determination that the creation of the District and the installation of the Improvements is in the public interest. The City will issue special improvement district bonds for financing the costs of constructing and installing the Improvements and paying incidental costs relating thereto. The City will not pledge the Revolving Fund to such Bonds unless one of the following circumstances exist:

- a) The district is a Developed District.
- b) The District is being created and the Bonds are being issued for the purpose of financing required public improvements and the property in the District has previously been assessed the costs for a special improvement district which constructed direct service facilities to serve the property.

c) The District is undeveloped and the Developer posts security in accordance with 3.02(d) hereof.

d) The District is undeveloped and the Developer directly pays or otherwise finances 50 percent (50%) or more of the costs of the on-site improvements.

3.02. Standards Applicable to Undeveloped Districts.

a. Costs of Improvements. Any costs of the Improvements, including engineering, survey and legal work incurred prior to the issuance of the special improvement district bonds, including any City expenses, may be eligible for financing by the District as defined in M.C.A. 7-12-4169 (1) if the reimbursement is in compliance with United States Treasury Regulations, Section 1.150-2.

b. Amount of On-Site Improvements to be Financed. Special Improvement Districts will be created to finance the costs of no more than 50 percent of the On-Site Improvements proposed for an Undeveloped District except as otherwise provided in 3.01(b) and 3.02(d) herein. The determination of which of the On-Site Improvements to finance by Special Improvement District will be made by the City in consultation with the Developer, where appropriate. In making its determination the City will consider the nature of the Improvements and the ability to finance them on a tax-exempt basis.

c. Amount of Off-Site Improvements to be Financed. The total cost of Off-Site Improvements which are assessable against an Undeveloped District may be financed through a Special Improvement District only after a determination by the City Council that the proposed Off-Site Improvements are consistent with the City's public improvement goals and that installation of such improvements is necessary and timely. Notwithstanding the provisions of 3.02(a) the City may allow Costs of the Improvements for such Off-Site Improvements incurred prior to the creation of the District to be assessed against the District.

d. Posting Additional Security. Notwithstanding other provisions of this section, the City may in its discretion create Special Improvement Districts for Undeveloped Districts to finance more than 50% of the Costs of Improvements and issue bonds for financing such improvements secured by the Revolving Fund, if:

The Developer posts with the City at the time of the award of the sale of the bonds a letter of credit or some other form of credit acceptable to the City Finance Division as permitted by M.C.A. 7-12-4169 (4) in an amount sufficient to pay all principal and interest on the bonds for a period of five years (the Credit). The Credit will not be released until one of the following conditions is met: (i) 51% or more of the assessable area in the District becomes developed, or (ii) the District has a delinquency rate below 15 percent (15%) in each year for five consecutive years. The Credit provided for in this section which may be required to be posted by the Developer is in addition to other Credit that the Developer has posted for the development of the property

e. Delinquent Developers. It is the general policy of the City of Billings that any person, firm, partnership, organization or corporation requesting the creation of an undeveloped district shall, as a condition of approval of said district, be current in the payment of all existing City special improvement district assessments for

which said person, firm, corporation or partnership is responsible on all properties owned by said person, firm, corporation or partnership.

1) Exceptions to this policy may be made upon a specific determination by the City Council that it is in the public interest to make such an exception in view of the total circumstances involved in the proposed district.

2) The property owners who are requesting creation of the district and who are delinquent in payment of existing special improvement district assessments must request, in writing, an exception from this section. Any written request for an exception must contain, at a minimum, a description of the properties having delinquent assessments, a statement explaining why the delinquencies have occurred, an explanation of what measures are being taken to cure the delinquencies and an explanation as to why an exception should be granted to the general policy expressed in this section.

SECTION 4. Revolving Fund.

4.01. Deposit to the Revolving Fund. For Districts for which the City issues bonds secured by the Revolving Fund, the costs of the Improvement shall include a deposit to the Revolving Fund of 5% of the principal amount of the bonds to be issued. As allowed in Sec 7-12-4169 (3)(b) through (3)(e), the City may create a district reserve fund that is in excess to the minimum deposit of 5% to the Revolving Fund. This reserve fund will be accounted for separately from the revolving fund and will be designated for the district which it secures if, in the opinion of the Finance Division, such excess deposit is necessary to ensure payment of the bonds.

PASSED by the City Council and APPROVED this 24th day of January, 2005.



CITY OF BILLINGS

By Charles F. Tooley
Mayor

ATTEST:

By Marita Herold
City Clerk