

## 15.10.130 Additional regulations.

(C) *Payback Agreements.* For all payback agreements and development agreements with payback provisions entered prior to December 1, 2020, said agreements will be carried out according to their terms. For all such agreements that have not established either a benefit area, amount of expense, allocation of expense, or method of collection and payment of payback monies, the Public Works Director, in his sole discretion, will make such determinations. Subsection [\(C\)\(4\)\(j\)](#) shall apply to any legal challenge to any matter regarding a payback agreement or development agreement with payback provisions, including, but not limited to, matters related to benefit area, amount of expense, allocation of expense, or method of collection and payment of payback monies, regardless of the date said agreement was entered. Unless special provisions are approved by Council, for all agreements made on or after December 1, 2020, the following provisions will apply:

(1) Thirty days prior to the start of construction of an extension of any water or sewer line or other infrastructure, including streets and roads, to serve any privately owned real property, a developer desiring a payback agreement with the City shall provide the following to the Public Works Department:

- (a) An 11-inch-by-17-inch-size copy of the approved plans.
- (b) Three independent bids that contain the contractor's itemized construction costs and the engineering design costs for the infrastructure for which payback is sought, or other proposed basis for determining the amount of cost of construction.
- (c) A diagram of all property which will be benefited by the infrastructure installed, including the assessor's parcel numbers, a legal description of each affected parcel, and frontage lengths, together with the basis for determination of the property so benefited.
- (d) A formal request to the City on a form provided by the City for funding of the construction.

(2) The proposed payback agreement shall state to whom reimbursement shall be made and shall include a diagram of the properties and respective amounts of the payback charges proposed to be collected from each property based on the cost per linear foot of frontage or such other equitable method of spreading the costs as the circumstances may dictate.

(3) Proposed payback agreements shall state the cost of the infrastructure installed by a developer or owner from which others may be served. All related costs for the infrastructure such as construction, design, plan review and management fees shall be submitted to the Public Works Department in writing by the developer or owner and must be determined to be reasonable based on current circumstances. The Public Works Director has sole discretion in determining whether a submitted cost is reasonable and applicable to the infrastructure being constructed, as well as determining the benefit area, the properties benefited, the extent of benefit, and the share of the cost to be borne by the developer and/or owner.

(4) Subject to any guidelines or policies that may be implemented by the Public Works Director, the developer shall notify all benefitting parcel property owners before construction begins by certified or registered mail that construction of infrastructure will occur, and a payback amount will be assigned to each benefitting parcel that will be recorded with the Yuma County Recorder upon the project completion. This initial notification to each benefitting parcel shall include the following:

- (a) A letter explaining the payback assignment.
- (b) The proposed payback agreement and information on the benefitting parcels and the respective costs of the future reimbursement.

- (c) If the property owner of a benefitting parcel objects to either the cost allocation or any other procedural aspect of the payback agreement, the property owner must submit a written request for a hearing to the Public Works Department within 30 days of the date of mailing the notice. The notice shall contain the address and identification of a person or position designated by the Public Works Department to receive requests for a hearing.
- (d) Within five days following this mailing, the developer shall submit to the City a signed affidavit or declaration verifying this mailing and listing the names and addresses of all benefitting property owners to whom the notice was sent along with proof of the mailing. If the Public Works Department does not receive a request for a hearing within the time allowed, the Department may accept the proposed payback agreement as final.
- (e) If a request for hearing is received from one or more affected property owners, the Department shall set the date, time, and location of an administrative hearing on the proposed agreement. The City shall provide all affected property owners with notice of the hearing.
- (f) The Public Works Director will hold an administrative hearing at the stated date and time to establish each benefitting property's share in the cost of the improvements associated with the requested payback agreement. Any affected property owner may appear and be heard at the hearing. At the conclusion of the hearing, the Director may accept the payback agreement as proposed or modify the allocation of percentages based on information received at the hearing. The Director shall issue a written decision within ten business days of the conclusion of the hearing, and a copy shall be mailed or emailed if requested to each affected property owner. The Director may appoint a civil engineer, experienced in municipal infrastructure, to be the hearing officer conducting said hearing and issuing the decision.
- (g) Any affected property owner who appears at the hearing may appeal the determination of the Public Works Director, or the designated hearing officer, to the City Manager by submitting a notice of appeal to the Public Works Director within ten business days of the date of the issuance of a written decision. The City Manager may review the decision based on information and testimony submitted at the hearing or may, in his/her discretion, accept any additional information or testimony. If a notice of appeal is not timely submitted, the decision shall become final. If an appeal is timely submitted, the decision of the City Manager on appeal shall be final.
- (h) Once a decision is final, the Public Works Department shall use the results to determine the maximum reimbursement amount to be included in the payback agreement. The developer or assignee shall receive payback charges within the payback period only from those property owners who receive a benefit from the infrastructure the developer installed.
- (i) The City will prepare both the payback agreement and the amount assigned to each benefited property and have notice of each recorded with the Yuma County Recorder.
- (j) For any legal challenge to a decision of the Public Works Director, the City shall have the burden to show by a preponderance of the evidence that a reasonable basis exists to support the decision. Upon such a finding, the decision shall be affirmed unless it is shown to be arbitrary or capricious.

(5) Any agreement providing for reimbursement of the developer shall run for the period of time set forth in any agreement entered into prior to December 1, 2020, and 20 years after the date of acceptance of the infrastructure for agreements entered on or after December 1, 2020. At the end of the maximum period, as determined by the City, all benefits or rights accruing to the developer shall terminate.

(6) Within 60 days after construction completion of any infrastructure to serve any privately owned real property, upon acceptance of said infrastructure by the City, the developer desiring a payback agreement with the City shall provide the following to the Public Works Department:

(a) An 11-inch-by-17-inch-size copy of the approved as-built construction drawings indicating actual facilities installed;

(b) Receipts identifying actual design and construction costs and proof that the developer made the payment.

(7) Upon receipt of the administrative charge defined in subsection [\(C\)\(10\)](#) of this section and execution of the payback agreement, the City shall record the agreement with the Yuma County Recorder as to each property that is subject to the agreement together with a notice of payback, setting forth the terms of this agreement. Once the payback charges or the maximum period has elapsed, the City will record with the Yuma County Recorder a release of the original notice of payback.

(8) The City shall establish a trust account for the collection of line payback charges and payment of reimbursements. Sums collected shall be paid in accordance with the terms of the agreement and within 90 days of receipt by the City.

(9) Payback charges shall include a maximum simple interest rate equal to one percent plus the prime rate, as published by the Board of Governors of the Federal Reserve System, per month, or any portion thereof, from the date the payback agreement is executed. This rate shall not change for the life of the reimbursement requirement. Provided, however, any affected property owner who elects to pay the entire amount charged to such owner's parcel within 60 days of the payback agreement becoming final shall not be required to pay any interest.

(10) The developer and/or owner shall pay the City's cost of administration to the City before the execution of the payback agreement. This administrative charge shall be five percent of the total cost incurred by the developer and/or owner for the construction of the infrastructure from which persons other than the developer will be served, with a maximum administrative charge of \$10,000. Administrative charges will be distributed equally among the properties benefited if equal costs are applied to each parcel or based on the cost per linear foot of frontage.

(D) *Payback Charges.* For land, and any part thereof, which is the subject of an existing payback agreement, the required payback charge, including all costs and interest, shall be paid to the City prior to:

(1) The issuance of a permit authorizing connection to the public water or public sewer system;

(2) The extension of water or sewer service;

(3) The issuance of any building permit;

(4) The processing of any request for rezoning, variance, or conditional use permit; and

(5) The processing of any request for lot split or subdivision of land.