

# COTTONWOOD HEIGHTS

## ORDINANCE NO. 234

### AN ORDINANCE ENACTING SECTION 17.16.130 OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES TO PROVIDE FOR POSSIBLE PARTIAL REIMBURSEMENT OF CERTAIN STORM WATER INFRASTRUCTURE COSTS

**WHEREAS**, effective 14 January 2005, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) adopted a code of ordinances (the “*Code*”) for the City; and

**WHEREAS**, following adoption of the Code, the Council determined that further regulation of storm drainage and flood control development, groundwater source protection and related matters in the City was warranted and, consequently, amended the Code on 18 November 2008 to include Title 17, entitled “Storm Drainage and Flood Control Development; Ground Water Source Protection” (“*Title 17*”); and

**WHEREAS**, the Council heretofore has amended Title 17 and now has determined that it may be advisable to further amend Title 17 to enact new Section 17.16.130 (“*Section 17.16.130*”) providing for possible partial reimbursement of certain storm water infrastructure costs under certain circumstances; and

**WHEREAS**, the Council met in regular session on 16 December 2014 to consider, among other things, enacting Section 17.16.130 as proposed; and

**WHEREAS**, after careful consideration of the recommendations of, *inter alia*, the City’s public works director and the City engineer, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to enact Section 17.16.130 as proposed;

**NOW, THEREFORE, BE IT ORDAINED** by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Enactment of Section 17.16.130.*** The Council hereby approves, adopts and enacts Section 17.16.130 in the form attached hereto, and hereby codifies the same as Section 17.16.130 of the Code; provided, however, that the city attorney, with such assistance as he may require from other city officers and staff, is authorized and directed without further council action to make such additional formatting and technical corrections to Section 17.16.030 as he may consider to be appropriate in connection with inclusion of Section 17.16.030 in the Code.

Section 2. ***Action of Officers.*** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this “*Ordinance*”), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

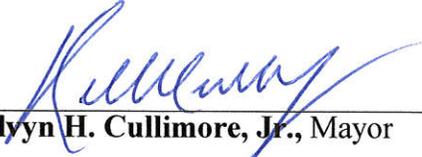
Section 3. ***Severability.*** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. ***Repealer.*** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. **Effective Date.** This Ordinance, assigned no. 234, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

**PASSED AND APPROVED** this 16<sup>th</sup> day of December 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By   
**Kelyyn H. Cullimore, Jr.,** Mayor

**ATTEST:**



  
**Kory Solorio,** Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

**DEPOSITED** in the Recorder's office this 16<sup>th</sup> day of December 2014.

**POSTED** this 18 day of December 2014.

### **17.16.130 Reimbursement agreements.**

#### **A. *Purpose and policy.***

1. ***Purpose.*** The purpose of this section is to require contribution toward storm water drainage system development costs by those benefiting therefrom and to establish a method of fairly allocating proportionate costs of public improvements, including project improvements and system improvements associated with real estate development.

2. ***Policy.*** The city's policy is that, as a condition of development approval, each developer should pay a reasonable share of the costs of public storm water drainage improvements that are roughly proportionate to the impact of the development. Such proportionate share shall be determined in a fair and equitable manner. This policy may be implemented through the use of fees, dedication of real property, dedication of improvements, reimbursements, or any other lawful method.

#### **B. *Definitions.*** In this section, the words set forth below shall have the following meanings:

1. ***"Applicant"*** means a developer who has submitted an application requesting the city to enter into a reimbursement agreement under this section.

2. ***"CFP"*** means the city's capital facilities plan from time to time.

3. ***"Eligible public improvements"*** means:

(a) Storm water drainage system improvements that meet all of the following criteria:

(i) They are required as a condition of development approval;

(ii) They are anticipated to serve future development;

(iii) They are off-site or will create additional or excess capacity beyond the proportionate share necessary to serve the proposed development at the city's adopted level of service standards; and

(iv) They either are included in the CFP; are approved in writing by the city engineer in advance of development; or are approved by the city council, all in accordance with the city's ordinances, rules, regulations, engineering standards and specifications.

(b) ***"Eligible public improvements"*** may include ***"system improvements"*** but shall not include ***"project improvements,"*** both as defined in this section, except to the extent that the project improvements are extended off-site and/or are oversized to create additional or excess capacity beyond the proportionate share necessary to service the proposed development at the city's level of service standards.

4. ***"Project improvements"*** means on-site storm water drainage system improvements that are planned and designed to provide service for a development and that are necessary for the use and convenience of the occupants or users of the development. The determination of what constitutes ***"project improvements"*** will vary somewhat depending on the specific facts and circumstances presented by the nature, size and scope of any particular development. ***"Project improvements"*** are not ***"system improvements,"*** as defined in this section.

5. ***"Public improvements"*** and ***"public facilities"*** mean public storm water drainage system improvements and facilities.

5. ***"Reimbursement of cost allocations"*** means costs that are allocated to and paid by property owners or developers of properties that are deemed benefited properties and are subject to a reimbursement agreement.

6. ***"System improvements"*** means:

(a) Existing public facilities that are designed to provide services within the city to the community at large; or

(b) Future public facilities identified in the CFP or otherwise pre-approved by the city engineer or the city council in writing and that are intended to provide services within the city to the community at large; and

(c) Are not project improvements.

#### **C. *Responsibilities for improvement costs.***

1. As a condition of development approval, a developer shall install public improvements which are reasonably necessary to fully serve the proposed development at adopted level of service standards. Where required by the city engineer to connect to existing public improvements with adequate capacity, accommodate future development, or accommodate the CFP, the developer shall also be required to install off site or oversized public improvements reasonably necessary to extend, expand or improve the city's storm water drainage system infrastructure beyond that which is necessary to serve or benefit the particular development.

2. All design costs, construction costs, installation costs, and the costs of acquiring and dedicating real property and easements shall be paid by the developer, at the developer's sole expense.

D. *Reimbursement for system improvements.*

1. Authorized. The developer may request a reimbursement agreement for eligible public improvements. City approval of a reimbursement agreement shall be subject to availability of funds, city's prioritization of public improvement projects, and the prospect for an appropriate level of financial contribution by future developments to be served by such public improvement, all as determined by the city council in its discretion. Any reimbursement agreement is subject to city council approval.

2. Impact Fees. Reimbursement for a public improvement may be made from the impact fees collected and deposited in the city's storm water impact fee account. The eligible costs for the improvement shall not exceed the costs upon which the impact fees were established.

3. Expiration. The reimbursement for system improvements may continue until such time as the cumulative reimbursement amount reaches an amount equal to the maximum reimbursement for said system improvements. No reimbursement shall be due or payable in excess of the amount of storm water impact fees available, after higher priority projects in the CFP have been adequately funded.

E. *Reimbursement agreement.*

1. Request For Agreement. Any developer who intends to construct eligible public improvements may submit an application requesting that the city enter into a reimbursement agreement with the applicant for eligible public improvements constructed and installed. Reimbursement will be available only pursuant to a fully executed and effective reimbursement agreement approved by the city council in its discretion.

2. Evaluation of Agreement. The city shall evaluate reimbursement agreements on a case by case basis, and develop a fair and equitable method of allocating the proportionate share of the cost to all the properties creating the need for or benefiting from the available public improvements. It is anticipated that each situation will have its own unique features and characteristics, and therefore each reimbursement agreement may use one or more allocation methods, as appropriate and determined by the city, in determining the proportionate share of the costs to be borne by the properties which receive benefit from or create the need for the eligible public improvements.

3. Contents of Agreement. The reimbursement agreement shall contain, at a minimum, the following provisions:

- (a) Identification of the eligible public improvements that the applicant agrees to construct;
- (b) Estimated cost of the eligible public improvements, including acquisition of property and/or easements;
- (c) Maximum reimbursement to be made available to the applicant;
- (d) Except for system improvements, identification of benefited properties to which costs of the eligible public improvements will be allocated;

- (e) Except for system improvements, allocation of costs and method of assessment which may include, but is not limited to, frontage, zone, area, lot, impervious area, number of connections, or any other fair and equitable criteria;
- (f) Requirements for documentation, acceptable to the city attorney, verifying actual costs of eligible public improvements;
- (g) Waiver and a covenant not to sue, which provision shall be in a form acceptable to the city attorney;
- (h) No interest shall be paid on any amounts due under the agreement;
- (i) Acknowledgement that the city's liability for any reimbursement of cost allocations or other payments for actual or perceived benefits conferred on other private properties by the public improvements in question shall be limited to payments actually received and collected by the city from those benefitted properties.
- (j) Requirements for modification of the agreement by written amendment, executed by the parties to the agreement; and
- (k) The reimbursement agreement shall not confer a benefit upon any third party; shall not be assigned, transferred or conveyed without the express approval of the city; and shall be in a form approved by the city attorney.

4. Maximum Reimbursement.

- (a) The maximum amount of reimbursement shall be established by the city in its reasonable discretion, and may be less than that requested by the applicant.
- (b) No interest shall be included in the amount of the reimbursement, and no interest shall be paid to the developer by the city or any other person on amounts becoming due.
- (c) In no event shall reimbursement exceed the developer's actual out-of-pocket cost of eligible public improvements.
- (d) The maximum reimbursement shall be as set forth in the reimbursement agreement or an amendment thereof, unless additional reimbursement is approved by the city manager according to this subsection 4.
- (e) Upon verification by the city engineer of the actual cost of satisfactorily completed eligible public improvements, the city engineer shall recommend a reimbursement amount to the city manager for those eligible public improvements that are system improvements. The city manager may:
  - (i) Approve reimbursement of the verified actual costs up to the amount of the maximum reimbursement set forth in the reimbursement agreement;
  - (ii) Approve reimbursement of the verified actual costs up to ten percent over the maximum reimbursement set forth in the reimbursement agreement, provided that the actual costs are determined by the city engineer to be reasonable; or
  - (iii) Recommend to the city council approval or denial of an amendment to the reimbursement agreement increasing the maximum reimbursement.

5. Collection From Benefitted Properties. Reimbursement of cost allocations may only be collected from benefitted properties that are identified in a fully executed and effective reimbursement agreement. The appropriate amount shall be requested upon development of the identified benefitted property, meaning upon recording of a subdivision plat or issuance of a building permit for the benefitted property, whichever occurs first. The city's liability for any reimbursement of cost allocations or other payments for actual or perceived benefits conferred on other private properties by the public improvements in question shall be limited to payments actually received and collected by the city from those benefitted properties.

6. Release From Liability For Payment. The city shall, in all cases, be immune and not liable for any payments to the developer if a city reimbursement ordinance or reimbursement agreement is determined by a court to be illegal, unconstitutional, or otherwise unenforceable for any reason.

F. Expiration. Except reimbursement for system improvements as set forth in subsection D, above, of this section, reimbursement agreements and public reimbursements shall expire a maximum of ten years after the effective date of the agreement, or at such time as the cumulative reimbursement amount reaches the maximum reimbursement, whichever event occurs first. No reimbursement shall be due or payable after said ten year period.

G. Cost Allocation for Non-System Improvements.

1. In determining the appropriate reimbursement cost allocation for eligible public improvements that are not system improvements, the city manager or designee shall consider the reasonable cost of the improvements, including construction and land costs, and other out-of-pocket expenses directly related to the completion of the improvement. The city manager may also consider the expected useful life of the improvement, the necessity of the improvement for development of the benefited parcels, prior contributions by property owners, the proportionate benefit received by each parcel compared to the benefit received by all parcels served by the public improvements, the intensity of use of the improvements by each parcel served, and any other factors that the city manager deems fair and appropriate.

2. In no event shall the cumulative total of all reimbursement cost allocations exceed the maximum amount of reimbursement set forth in the reimbursement agreement or the actual cost of the eligible public improvements.

H. Administrative Review. If the developer of a benefited property disagrees with the reimbursement cost allocation to which the benefited property is subject, the developer may challenge the method or amount of the reimbursement cost allocation by submitting notice of such challenge to the city manager. If the developer chooses to pay the reimbursement cost allocation in order to proceed with development, notice shall be given to the city manager, at the time of payment, that the payment is made under protest and that the developer challenges the reimbursement cost allocation. Failure to submit notice to the city manager as required by this section shall constitute a waiver of the developer's right to challenge the reimbursement cost allocation. The city manager shall render a decision on the challenge, typically within 30 calendar days of receipt of such notice. The city manager's decision shall be final.