

City of Houston, Texas, Ordinance No. 2008-307

AN ORDINANCE AMENDING SECTION 47-164 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO DEVELOPER PARTICIPATION CONTRACTS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY, AND DECLARING AN EMERGENCY.

* * * *

WHEREAS, the City Council desires to amend Section 47-164 of the Code of Ordinances to facilitate and improve the administration of developer contracts; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this ordinance.

Section 2. That Section 47-164 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-164. Construction by developers under developer contract.

Subject to the availability of funds allocated for that purpose by city council, the city may share in the expense of construction of the main and other eligible costs by any of the following methods, as applicable, at the option of the developer:

- (1) *50 percent reimbursement:* Reimbursement to the developer is the sum of 50 percent of the construction cost for water and wastewater main, the balance of oversizing costs, plus design costs for a total reimbursement that does not exceed the maximum contract amount not requiring council approval under the Houston City Charter; or
- (2) *30 percent reimbursement:* Reimbursement to the developer for 30 percent of the construction cost for water and wastewater main plus the balance of oversizing costs; or
- (3) *70 percent reimbursement:*

a. For new low or moderate cost single family homes sold to home owners by fee simple deed (single family residences located within the city limits having initial purchase prices as certified by the developer that do not exceed the latest available 12-month listing for median price single family housing in the city as published by the Real Estate Center at Texas A&M University), reimbursement to the developer for the following eligible costs:

- (i) 70 percent of water and wastewater main construction costs plus the costs of inspection and construction management,
- (ii) 100 percent of related design cost,
- (iii) All oversizing costs not reimbursed under provision (i) above,
- (iv) Up to a \$3,000.00 per lot reimbursement of storm sewer drainage cost, and
- (v) The developer's interest cost up to the market interest rate the city's financial advisor determines the city would pay if it issued bonds on the city's water and sewer system on the date the developer contract is countersigned by the city controller.

b. For all other new single-family homes sold to home owners by fee simple deed, reimbursement to the developer for the following eligible costs:

- (i) 70 percent of water and sanitary sewer main construction costs,
- (ii) 100 percent of related design costs,
- (iii) All oversizing construction costs not reimbursed under provision (i) above, and
- (iv) The developer's interest cost up to the market interest rate the city's financial advisor determines the city would pay if it issued bonds on the city's water and sewer system on the date the developer contract is countersigned by the city controller.

Reimbursement under this item is not available for off-site main. In addition, the developer must give notice to the department of the commencement of construction of the project and award the construction contract in a manner consistent with the procedures of Chapter 252 of the Texas Local Government Code.

The city shall reimburse the developer for eligible costs upon the completion of at least 25 percent of the total number of housing units required under the terms of the developer contract.

- (4) A developer shall not be reimbursed for any eligible costs, including interest, and shall waive any right to claim such reimbursement if the developer fails to:
- a. Obtain a fully executed developer contract prior to beginning construction of the facilities;
 - b. Begin actual construction of the facilities described in the developer contract within 18 months after the date of countersignature of the developer contract by the city controller; or
 - c. Complete construction of 100 percent of the facilities described in the developer contract (and 25 percent of the number of housing units required by a 70 percent developer reimbursement contract) within three years of the date the developer commences construction.

In no case shall the city reimburse the contractor for an amount in excess of the amount set out in the developer reimbursement contract, which must not ever exceed \$1,000,000.00 per contract.

- (5) Contingent upon city council's having appropriated sufficient funds to pay for such contracts, the city council delegates to the director the authority to execute developer contracts using standard forms approved by the city council. When a developer contract application is administratively complete, but at least 10 days prior to approval by director, the department shall provide the members of the city council notice of the scope and location of the proposed project as well as contact information for the developer.
- (6) The department shall charge each developer requesting a

developer contract application fees as provided below. Provided, however, the department shall refund the application fee if the developer has submitted a complete application as required by the department and funds are not available within 30 days of the developer's application. No refund shall be given for any other reason.

- | a. | <u>Number of Lots</u> | <u>Fee</u> |
|-------|--|------------|
| | 40 or fewer | \$300 |
| | 41 to 50 | \$350 |
| | 51 to 60 | \$400 |
| | 61 to 70 | \$450 |
| | 71 to 80 | \$500 |
| | 81 to 90 | \$550 |
| | 91 to 100 | \$600 |
| | 101 to 110 | \$650 |
| | 111 to 120 | \$700 |
| <hr/> | | |
| | 121 to 130 | \$750 |
| | 131 to 140 | \$800 |
| | more than 140 | \$900 |
| b. | For 30% and 50% developer contracts: \$800 | |
| c. | For applications to extend the term of a developer contract: \$500 | |

These application fees shall be adjusted by the department each year effective on the first of April. The adjustment shall be based on the percentage change in the U.S. Consumer Price Index for all Urban Consumers for the Houston-Galveston-Brazoria Texas Metropolitan Area rounded up to the next ten dollar increment.

- (7) In the event construction costs not reimbursed by the city are \$5,000.00 or more, such unreimbursed cost shall be subject to pro-rata reimbursement as provided in sections 47-168 through 47-170.

- (8) In the case of construction of water main, the department shall be responsible for chlorination required by state law prior to use by the city.
- (9) In the event a developer defaults under a developer contract, the developer shall be barred from any additional developer contract for a period of a year following the default."

Section 3. The city council approves standard developer participation contracts in substantially the forms of the documents attached hereto for 30 percent participation, 50 percent participation and 70 percent participation by the City.


Section 4. All ordinances in conflict herewith are hereby repealed to the extent of conflict only.

Section 5. If any portion of this Ordinance, or the application thereof to any person or set or circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application shall not be affected thereby.

Section 6. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 9th day of April, 2008.

APPROVED this 9th day of April, 2008.



Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

Prepared by Legal Dept. _____
EWB:jdw _____ Senior Assistant City Attorney

Requested by Michael S. Marcotte, P.E., Director, Public Works and Engineering Department
L.D. File No.

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
		ABSENT ON PERSONAL BUSINESS HOLM
✓		GARCIA
✓		RODRIGUEZ
	✓	BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: APR 15 2008