City of Houston, Texas, Ordinance No. 2005-992

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 47 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 increase the stock of low to moderate cost housing within the Houston City limits and finds such policy to be a public purpose; and

WHEREAS, the City Council further desires to amend Article IV, Chapter 47 of the Code of Ordinances to facilitate the administration of developer participation contracts in accordance with House Bill 1606 (79th Tex. Leg. Regular Session); **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 47-161 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-161. Definitions.

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Construction cost means the full cost for materials and labor for construction of main, excluding the cost for surveys, easements and engineering and inspection services.

Developer means the owner or agent of the owner developing lots or tracts of property for further sale, lease, development or redevelopment for residential, commercial or industrial use.

Developer contract means a contract between a developer and the city for construction of main pursuant to section 47-164 of this Code.

Main, unless otherwise designated, includes water, wastewater and storm sewer main and includes off-site main.

Nonrevenue producing water main means water main supplying fire sprinkling systems and other water services for which the city receives no water revenue.

Off-site main means water, wastewater and storm sewer main lying outside the tract of land that is developed or redeveloped.

Permittee means a person granted a permit to construct main pursuant to section 47-165 of this Code.

Pro-rata charges means the charges established by city council for connection to off-site main as may be established under section 47-168 of this Code.

Public easement means an easement or right-of-way dedicated to the city or to the public, either by a recorded plat or recorded instrument of conveyance, or acquired by condemnation, within which main may be constructed, maintained and operated.

Subdivision means a tract or parcel of land subdivided into lots or tracts by a subdivision or development plat and to be sold or leased for residential, commercial or industrial purposes.

Utility construction permit or *permit* means a permit issued pursuant to section 47-165 of this Code allowing the developer to construct main."

Section 3. That Section 47-163 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-163. Developer construction –In general.

Except for main constructed by the city under section 47-162 of this Code, all main dedicated to the city for public use must be constructed by the developer as required by this article. As a condition for acceptance by

the city, main must be constructed in accordance with the following requirements:

(1) The developer must obtain water or wastewater capacity sufficient to serve its development as provided in articles IX and X of this chapter.

(2) An engineer registered in the state must design main. The design of main must conform to the design standards promulgated by the director. All main must be constructed in public easements, and the minimum diameter size for off-site main shall be eight inches, unless otherwise permitted by the department. Plans and profiles shall be approved by the department prior to commencement of construction.

(3) The developer must obtain all required subdivision or development plat approvals required under this Code.

(4) Construction of main estimated by the department to cost more than $25,000.00 must be guaranteed by payment and performance bonds in the form approved by the legal department. Bonds must be in the amount of the construction contract, and the city shall be an obligee for the performance bonds. The performance bond must guarantee materials and workmanship, including surface restoration, for a period of one year after acceptance by the department on behalf of the city.

(5) The developer must provide the department original record drawings in the form prescribed by the director.

(6) The department must inspect and approve the construction when completed."

Section 4. 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 the incremental construction cost of oversizing the water and wastewater main, 50 percent of the balance of construction cost, plus related design cost for a total reimbursement that does not to exceed the maximum contract amount not requiring council approval under the Houston City Charter; or

(2) *30 percent reimbursement*: Reimbursement to the developer is the sum of the incremental construction cost of oversizing the water and wastewater main plus 30 percent of the balance of construction cost for the water and wastewater main; 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) The incremental construction cost of oversizing the water and wastewater main,

(ii) 70 percent of the balance of construction cost for the water and wastewater main plus the cost of inspection and construction management,

(iii) 100 percent of related design cost,

(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) The incremental construction cost of oversizing the water and wastewater main,

(ii) 70 percent of the balance of construction cost for the water and wastewater main plus the cost of inspection and construction management,

(iii) 100 percent of related design cost, 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.

Under this item (3), the developer must take competitive bids in accordance with the procedures 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, including city council approval where necessary, 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 per contract.

(5) To the extent permitted by law, and contingent upon city council's having appropriated sufficient funds to pay for such contracts, city council authorizes the director to execute developer contracts under subsections (1) and (2) above in standard forms approved by the city attorney on behalf of the mayor without prior submission to city council.

(6) In the event construction cost 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.

(7) 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."

Section 5. That Subsection (a) of Section 47-165 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) No developer may construct main unless the developer secures a permit issued by the department. In the event there are not sufficient funds allocated or materials available for execution of the developer contract, or the developer chooses not to execute a developer contract, the developer may proceed to construct the main under a permit issued by the department."

Section 6. All ordinances in conflict herewith are hereby repealed to the extent of conflict only.

Section 7. 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 8. 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 24th day of August, 2005.

APPROVED this 24th day of August, 2005.

Bill White

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 8/19/2005 Senior Assistant City Attorney

Requested by Michael S. Marcotte, P.E., Director, Public Works and Engineering Department

L.D. File No.

CAPTION PUBLISHED IN DAILY COURT REVIEW DATE: AUG 30 2005

AYE	NO	2005-992
✓		**MAYOR WHITE**
• • • •	• • • •	**COUNCIL MEMBERS**
✓		LAWRENCE
	ABSENT-OUT OF CITY CITY BUSINESS	GALLOWAY
✓		GOLDBERG
✓		EDWARDS
✓		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		ELLIS
✓		QUAN
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

MAY 017 Rev. 1/04