

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
RIALTO, CALIFORNIA, ADDING CHAPTER 17.50 TO THE  
RIALTO MUNICIPAL CODE TO CREATE A PROCEDURE FOR  
THE APPLICATION FOR AND APPROVAL OF  
REIMBURSEMENT AGREEMENTS FOR CERTAIN PUBLIC  
IMPROVEMENTS

**WHEREAS**, the City is aware that there are situations in which a developer decides to construct an improvement that will be dedicated to the public and that will benefit other properties, which have not yet been developed and whose property owners are not participating in the cost of the improvement; and

**WHEREAS**, requiring that developer to bear the full burden of the costs of constructing an improvement that will benefit those other properties upon future development would be inequitable; and

**WHEREAS**, the improvements contemplated herein constructed by the developer are not connected with the public facilities or subject to development impact fees discussed in Chapter 3.33 of the Rialto Municipal Code; and

**WHEREAS**, Government Code Section 66485, *et seq.* allows a local agency to approve reimbursement agreements for the construction of improvements by a developer, requiring the owners of properties which benefit from the public improvement to pay for their pro rata portion of the improvement; and

**WHEREAS**, the City Council now desires to add Chapter 17.50 to the Rialto Municipal Code to establish a procedure for the application for and approval of such reimbursement agreements.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO FINDS AND ORDAINS AS FOLLOWS:**

**Section 1.** The above recitals are all true and correct and are hereby adopted as findings.

**Section 2.** Chapter 17.50 [Reimbursement for Public Improvements] of the Rialto Municipal Code (RMC) is hereby added to the RMC to read as follows:

“Chapter 17.50 REIMBURSEMENT FOR PUBLIC IMPROVEMENTS

**17.50.010 - Purpose.**

1 As a condition of approval of the grant of a land use entitlement for the development of  
2 property, a developer may be required to install public improvements that provide a benefit  
3 to the general public and to other specific properties in the vicinity of the improvements. This  
4 situation may occur when one developer elects to seek approval and begin development  
5 sooner than another. The purpose of this chapter is to establish a mechanism whereby a  
6 property owner who directly benefits from but does not contribute to certain public  
7 improvements will, at the time the benefited property owner develops the property, reimburse  
8 the developer who has installed the improvements. This chapter is not applicable to public  
9 facilities contemplated or covered under Chapter 3.33.

10 **17.50.020 – Definitions.**

11 Whenever in this chapter the words or phrases defined hereinafter in this section are used,  
12 they have the meanings assigned to them in the following definitions:

- 13 A. “Administrative Cost” means expenses and services, including legal fees, provided by the  
14 City in the application, approval, and management of reimbursement agreements.
- 15 B. “Benefit area” means the geographic area that benefits by the privately financed public  
16 improvements and would be assessed for the cost of the public improvements.
- 17 C. “Benefited property” shall mean a property within a benefit area for which no  
18 contribution to the cost of the public improvement was made at the time of its  
19 construction. Benefited property may include property owned by a public agency.
- 20 D. “Contribution charge” shall mean the funds owed by a benefited property pursuant to a  
21 reimbursement agreement.
- 22 E. “Engineering report” means the report prepared by a State-licensed Civil Engineer  
23 outlining the public improvements, benefited area, and proposed construction charges and  
24 reimbursement payment.
- 25 F. “Estimated construction cost” means the estimated cost of construction as outlined in the  
26 engineering report and approved by the City Engineer.
- 27 G. “Financing party” shall mean a property owner or developer who constructs or pays for  
28 the construction of public improvements within a benefit area.

- 1 H. "Land use approval" shall mean and include a permit or approval granted by the City for  
2 the development of property, including, but not limited to, a subdivision map approval,  
3 conditional development permit, precise plan of design, grading permit, building permit,  
4 and architectural or design review approval.
- 5 I. "Public improvements" shall mean infrastructure projects including, but not limited to,  
6 drainage, sewer and water systems, and public and private streets constructed to City  
7 standards.
- 8 J. "Reimbursement agreement" means an agreement to reimburse property owner(s) for  
9 development or extension of public improvements that benefit other properties.
- 10 K. "Reimbursement payment" means the payment to the property owner(s) who paid for the  
11 initial construction of the public improvements.
- 12 L. "Trust fund" means an account established for the deposit of the contribution charges to  
13 go towards the reimbursement payments during the life of the reimbursement agreement.

14 **17.50.030 – Procedure.**

- 15 A. General. If a property owner is required to construct public improvements as a condition  
16 of approval of a proposed development, and the required public improvements have the  
17 capacity and capability of serving and are designed to service benefited properties beyond  
18 the proposed development, the property owner may apply to the City for a reimbursement  
19 agreement as provided in this section.
- 20 B. Application. A property owner/financing party requesting a reimbursement agreement  
21 shall submit an application on a form provided by the City and shall provide information  
22 as required by the Community Development Director or City Engineer, including the area  
23 of the proposed benefit area. The City shall prepare a reimbursement agreement in  
24 conformance with the requirements of Section 17.50.040. The applicant shall also submit  
25 a deposit to cover the City's estimated administrative costs to review, process, and  
26 approve the reimbursement agreement.
- 27 C. Review. The Community Development Director or City Engineer will review and  
28 recommend that the City Council either approve, approve with modification, or reject the

1 proposed reimbursement agreement, in accordance with the procedures set forth in  
2 Section 17.50.050.

3 D. Timing. A property owner/financing party may not request, and the City Council may not  
4 approve, a reimbursement agreement after the date construction begins on a public  
5 improvement.

6 E. Recordation. The City shall record the approved reimbursement agreement, which shall  
7 include a list of each benefited property within a benefit area, with the Office of the  
8 County Recorder.

9 **17.50.040 Contents of the Reimbursement Agreement.**

10 A reimbursement agreement shall include, but is not limited to, the following provisions:

11 A. A detailed estimate cost of the design and construction of the public improvement, the  
12 applicant's equitable share of the cost, the amount of the total cost eligible for  
13 reimbursement, and the pro rata contribution charge attributable to each benefited  
14 property within the benefit area;

15 B. A detailed plat drawn at an engineering scale approved by the City Engineer showing  
16 each property included within the benefit area and a list of each property by County  
17 Assessor parcel number, as well as the precise location of all public improvements;

18 C. The method of calculating the contribution charge attributable to each benefited property  
19 within the benefit area and the rate of interest or appreciation, if any, to be added to initial  
20 charges during the period of the agreement;

21 D. A provision indicating who the property owner/financing party is for the purpose of  
22 receiving reimbursement;

23 E. The date on which the reimbursement agreement takes effect and benefited property  
24 owners must begin contributions;

25 F. A statement that no contribution charges collected by the City may be distributed as  
26 reimbursement payments to a financing party until the public improvement is completed  
27 and accepted by the City;  
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- 1 G. A list of the administrative costs, if any, to be charged by the City to administer the  
2 agreement. These costs may be shown as a percentage of the charges collected by the  
3 City;
- 4 H. A provision that any reimbursement payment to the property owner/financing party shall  
5 be paid only from contribution charges collected under the reimbursement agreement  
6 from the benefited properties listed in the reimbursement agreement as such properties  
7 receive a land use approval. Reimbursement to the property owner/financing party shall  
8 be paid only from such charges within 15 years from the date the reimbursement  
9 agreement becomes effective, unless a different time period is approved by the City  
10 Council; and
- 11 I. A provision that the City is not liable to the property owner/financing party for failure of  
12 a property owner of a benefitted property to pay a contribution charge or because of legal  
13 inability of the City to collect the charge from a property owner.

14 **17.50.050 Notice and Hearing.**

- 15 A. The City Council shall hold a public hearing on the application. At least 10 days before  
16 the hearing, the City shall notify each benefited property owner in the proposed benefit  
17 area in writing, via certified mail, return receipt requested, advising of the nature of the  
18 hearing, date, and time, and shall provide a copy of the proposed reimbursement  
19 agreement and staff report that will be submitted to the City Council.
- 20 B. An affected benefited property owner may file written or oral comments or objections to  
21 the application before or at the hearing.
- 22 C. No property may be included within a benefit area unless the notice is sent to the affected  
23 property owner. The failure of any benefited property owner to receive the notice  
24 required by this section shall not invalidate the reimbursement agreement.
- 25 D. After the public hearing, the City Council may, by resolution, approve, approve with  
26 modifications, or deny a reimbursement agreement. Before granting approval, the City  
27 Council shall make each of these findings:  
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1. The improvements for which reimbursement is sought is a public improvement which will, upon completion, be dedicated to and accepted by the City, if constructed to the applicable standard set by the City Engineer;
2. The public improvement is not located entirely within the boundaries of the proposed development;
3. The public improvement has the capacity and capability of serving and is designed to serve additional properties not within the proposed development due to the supplemental size, capacity, number, or length of the improvement;
4. The proposed benefit area represents a geographical area of property which will benefit directly and substantially by the public improvement; and
5. The method of determining the contribution charges and the amount of the pro rata share of contribution charges are fair and reasonable to both the property owner/financing party and the benefited property owners and fairly distributes the charges among all benefited properties, as well as the property owner/financing party, in proportion to the estimated benefit each will receive from the public improvement.

**17.50.060 Payment by benefited property owner.**

- A. A benefited property owner shall pay the applicable contribution charge set forth in the reimbursement agreement whenever that person obtains a land use approval. The charge is payable at the time a building permit is issued.
- B. The contribution charge applies only (1) after the reimbursement agreement is recorded; (2) during the period a reimbursement agreement is in effect; and (3) if the City Engineer determines that the land use approval involves the scope and type of development contemplated by the reimbursement agreement.
- C. Payment of the contribution charge is not required as a condition of issuing an approval for the alteration or enlargement of an existing building or structure (or the erection of an accessory building or structure) on a benefited property if the work:
  1. Is on the same parcel of land;
  2. Does not create an additional dwelling unit;

3. Will not change the potential for use of the public improvement; and

4. In any three year period will not exceed one-half the value of all existing improvements on that parcel of land.

D. No property may be charged a double fee under this section.

E. A benefited property owner has no obligation to pay a contribution charge if the owner does not develop the property during the effective period of the reimbursement agreement.

F. All contribution charges shall be held by the City or deposited into a trust fund in a local institutional depository. The right of the applicant to the reimbursement payment therefrom shall be personal to the applicant and shall not run with or be assignable with the property owned by the applicant at the time the reimbursement agreement is executed.

**17.50.070 Implementation by City Council.**

The City Council may adopt rules and regulations it considers necessary to implement this chapter.”

**Section 3.** Every section, provision, or part of this ordinance is declared severable from every other section, provision, or part of this ordinance. If any section, provision, or part of this ordinance is adjudged to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this ordinance.

**Section 4.** The City Clerk shall certify to the adoption of this Ordinance, and cause the same to be published in the local newspaper, and the same shall take effect thirty (30) days after its date of adoption:

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

DEBORAH ROBERTSON, Mayor

ATTEST:

BARBARA McGEE, City Clerk

APPROVED AS TO FORM

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FRED GALANTE, City Attorney

1 STATE OF CALIFORNIA )  
2 COUNTY OF SAN BERNARDINO ) ss  
3 CITY OF RIALTO )

4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing  
5 Ordinance No. \_\_\_\_\_ was duly passed and adopted at a regular meeting of the City Council of  
6 the City of Rialto held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

7 Upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember  
8 \_\_\_\_\_, the foregoing Ordinance No. \_\_\_\_\_ was duly passed and adopted.

9 Vote on the Motion:

10 AYES:

11 NOES:

12 ABSENT:

13 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of  
14 Rialto, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Barbara A. McGee, City Clerk  
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