

STATE OF TEXAS

AN ORDINANCE OF THE CITY COUNCIL OF SEGUIN, TEXAS AMENDING THE SEGUIN CODE OF ORDINANCES CHAPTER 102, UTILITIES, BY THE ADDITION OF A NEW ARTICLE X TO ESTABLISH PRO RATA ASSESSMENTS FOR THE REIMBURSEMENT OF CERTAIN PUBLIC UTILITIES CONSTRUCTED IN ACCORDANCE WITH A CAPITAL IMPROVEMENT AGREEMENT; PROVIDING FOR PUBLICATION; PROVIDING A SEVERABILITY CLAUSE; AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE FOR SUBMISSION AS A SUPPLEMENT TO THE CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on occasion a developer desiring utility service to property that is not currently served by a particular city utility will construct, at the developer's cost, the utility to serve that particular property; and

WHEREAS, other properties along the utility route will benefit the developer's expense in extending a line across or near the intervening property on route to the developer's property; and

WHEREAS, in order to level the playing field, and in fairness to the first developer willing to expend funds to extend utilities, the intervening properties should share, through reimbursement, the cost of the utility extension; and

WHEREAS, the proposed pro rata assessment apportions the reimbursement for approved construction costs through determining the cost per living unit equivalent for those intervening units that could be served when connected to the utility; and

WHEREAS, the assessment will be collected, if within ten years of acceptance of the utility, by the city when the property is platted and the constructing developer can receive reimbursement from the amount collected.

NOW THEREFORE BE IT ORDAINED by the City of Seguin, Texas:

SECTION ONE. The Seguin Code of Ordinances, Chapter 102, Utilities, is amended by adding a new Article X, Pro Rata Assessment and associated sections:

ARTICLE X. PRO RATA ASSESSMENT

Sec. 102-500 - Pro rata fees to be established.

(a) *Nature of fee.* A charge known as a "pro rata fee" may be assessed against all property wherein a developer or other entity seeking a permit in the area in which a utility line is located and that such property or development is eligible to and will be served by the utility line and for which a pro rata fee assessment has been requested and approved or imposed in accordance with this division. The pro rata fees collected will be used to reimburse all or a portion of the eligible costs to construct the line. The pro rata fees collected will be paid to the owner or developer that constructed the line, subject to the limitations of this division and applicable law. Where applicable the pro rata fee is in addition to any capital recovery fees due for each constructed unit.

(b) *Calculation of pro rata fee.* The total cost of the utility line, together with all appurtenances, as approved in an existing agreement and determined by the City Engineer will be apportioned across the service area of the line establishing a unit cost per living unit equivalent based on the potential for a connecting property's maximum utility use capacity. The amount of the pro rata fee assessed against any property shall be the cost per living unit equivalent multiplied by the number living unit equivalents approved during the platting stage for the subdivision based on the total number of living unit equivalents that will eventually connect to the line during full development of the project. If a proposed development will make multiple connections to the eligible line, then each connection shall be assessed a fee based on the living unit equivalents served by that connection.

(c) *Adjustments to pro rata fee assessments.* The City Engineer may make adjustments to the apportionment of pro rata fees assessed against a property upon a finding that the overall costs to the development are not roughly proportional to the projected impact of the proposed development. Any such adjustment of fee shall only occur after the developer seeking the adjustment presents evidence signed and sealed by an appropriate engineer licensed in the State of Texas that the cost of the development is not roughly proportional to impact of the proposed development.

(d) An owner or developer that is a party to a pro rata reimbursement contract under this division shall have no recourse against the city for any failure of the pro rata fees assessed and collected by the city to meet the owner's or developer's expectations or for a reduction in the amount of fees collected to as a result of adjustments made by the City Engineer under this section or any other waivers of fees provided under this division.

Sec. 102-501. - Pro rata fee account.

A pro rata fee account is hereby established. The city shall deposit all pro rata fees collected into such account. The funds deposited into this account shall be used solely to reimburse the city and/or any owner or developer for the costs authorized under this division of installing utility lines subject to a pro rata fee assessment.

Sec. 102-502. - Collection of pro rata fees.

Obligation to pay fee. Except as provided in this division, the owners of all properties connecting to a utility line for which pro rata fees have been authorized shall be obligated to pay a pro rata fee. The pro rata fee shall be due and payable before the approval of any plat or the issuance of any permit under the Unified Development Code.

Sec. 102-503. - Request for reimbursement from pro rata fee assessments.

(a) *Pro rata reimbursement contract.* All requests for reimbursement from pro rata fee assessments will be made through an approved Capital Improvement Agreement that sets out the details for the eligible expenses that will be provided in the approved cost estimates for the line.

(b). The City Engineer shall establish a maximum amount eligible for reimbursement from pro rata fee assessments. The City Engineer shall then submit for consideration by the city council a contract with the owner or developer setting forth the terms and conditions under which the

owner or developer may be reimbursed from a pro rata fee assessment and the maximum amount eligible for reimbursement, less any fees, offsets and other adjustments or deductions provided in this division. The city council, in its sole discretion may approve or reject the proposed contract and in approving a contract may add such terms and conditions it deems appropriate under the circumstances.

(c) *Submission of actual cost information.* After completion of the improvements pursuant to a contract approved by the city council under subsection (a), and at or before the time the improvements are dedicated to and accepted by the city the owner or developer shall supplement the request for reimbursement with such other information the City Engineer may request to verify the actual cost to construct the improvements, including evidence satisfactory to the City Engineer that such cost and all subcontractors and suppliers have been paid. Only costs for improvements actually set forth in a valid reimbursement agreement shall be considered in the calculation of the reimbursement amount.

(d) *Determination of potential reimbursement amount.* Upon receipt of a complete submission of the actual cost information in subsection (c) from the owner or developer, the City Engineer shall verify the costs submitted in support of the reimbursement request. The City Engineer shall then establish a reimbursement amount and apportion such amount as a pro rata fee among the properties within the service area of the utility line in accordance with Section 102-500.

(e) *No guarantee of reimbursement.* By entering into a pro rata reimbursement contract with an owner or developer under this section, the city in no manner guarantees that the owner or developer will be reimbursed or will receive any minimum reimbursement amount. The owner or developer, regardless of the terms of any contract with the city under this section, shall have no recourse against the city based on the failure of the pro rata fees collected by the city to meet the owner or developer's expectations.

Sec. 102-504. - Disbursement of funds from pro rata fee account.

(a) *Reimbursement amount.* The developer may be reimbursed from the pro rata fee account an amount not to exceed the eligible costs approved by the city council under subsection 102-500(b). When the city participates in the oversizing of a line, the developer and the city shall each be reimbursed in proportion to their respective costs.

(b) *Offset.* Before disbursing any funds to the developer from the pro rata fee account, the city may deduct as an offset any amounts owed by the developer to the city.

(c) *Ten-year disbursement period.* As pro rata fees are collected from individual property owners benefitting from a utility line, disbursements, less any deductions allowed under this division, shall be made to reimburse the costs to construct the line incurred by the developer and/or the city as applicable. Disbursements shall be made for a period of ten years after the date the completed improvements are dedicated to and accepted by the city or until such time as all pro rata fees attributable to the improvements have been collected, whichever is sooner.

(d) *Time for making disbursements.* The city shall make disbursements on its own account or to a developer, as applicable, semi-annually in February and July.

(e) *Unclaimed funds.* It shall be the responsibility of any owner or developer entitled to reimbursement from the pro rata fee account to notify the city of any change of address or other information necessary for it to receive payment. If the city is unable to reimburse a developer entitled to reimbursement from the pro rata account following reasonable attempts to locate such developer, the city shall retain such unpaid funds for a period of two years after expiration of the ten-year reimbursement period. If the funds have not been disbursed within such time, the city may refund fees collected to the depositors of any pro rata fees. If any depositor cannot be located, after reasonable attempts to locate such depositors, the pro rata fees shall be transferred to the city and appropriate utility fund for expenditure by the city. For purposes of this section, publication of notice regarding the unpaid funds or eligibility for a refund of such funds shall constitute a reasonable attempt by the city to locate a person or entity.

(f) *City administrative collection fee.* On all pro rata fees reimbursed to the developer, the city shall deduct two percent of the amount collected as an administrative collection fee. The city shall deposit administrative collection fees into the city utility fund for expenditure by the city.

SECTION TWO. In accordance with Section 3.10 of the Seguin City Charter, this Ordinance shall become effective upon ten (10) days following passage on second reading and shall be published in a newspaper of general circulation.

SECTION THREE. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

SECTION FOUR. City staff is authorized to prepare this Ordinance for submission as a supplement to the Seguin Code of Ordinances.

PASSED AND APPROVED on first reading this 18th day of October 2022.

PASSED AND APPROVED on second reading this 1st day of November 2022.

Donna Dodgen, Mayor

Attest:

Naomi Manski, City Secretary