

TOQUERVILLE CITY
ORDINANCE 2022.02



AN ORDINANCE OF THE CITY COUNCIL OF TOQUERVILLE, UTAH, AMENDING AND CHAPTER 19 (SUBDIVISIONS) WITHIN TITLE 10 (LAND USE REGULATIONS) OF THE TOQUERVILLE CITY CODE TO ADD ARTICLE I (PUBLIC FACILITY REIMBURSEMENTS) AND ARTICLE J (PUBLIC FACILITY INSTALLATION, CONNECTIONS AND DEFERRALS)

RECITALS

WHEREAS, Toquerville City (“City”) is an incorporated municipality duly organized under the laws of the State of Utah;

WHEREAS, the City is authorized and required pursuant to Utah Code Annotated, Title 10, Chapter 9a, Section 501 to create and enforce regulations regarding the use of land within the City’s municipal boundaries;

WHEREAS, pursuant to Utah Code Annotated, Title 10, Chapter 9a, Section 103 and Title 10, Chapter 3b, Section 301, the Toquerville City Council (“City Council”) is designated as the governing and legislative body of the City;

WHEREAS, the City is experiencing considerable growth and development within its municipal boundaries and is encountering varying requests from developers such as: a) reimbursement for part or all of the cost of installing Public Facilities (roads, trails, parks, storm drains and detentions, water lines and tanks, etc.) which have additional capacity which does not necessarily need to be installed to the scope and size necessary to service their individual development, and b) deferral of the obligation to install required Public Facilities until a date or event in which the proper size, scope and location of the Public Facilities can be ascertained and the need for said Public Facilities from a health, safety and general welfare perspective is present.

WHEREAS, the City has determined that it is in the best interests of the health, safety and general welfare of the City to amend Chapter 19 of Title 10 to include two new articles setting for the purpose and policies of the City regarding reimbursement requests for the installation of Public Facilities and deferral requests for Public Facilities.

ORDINANCE

NOW THEREFORE BE IT HEREBY ORDAINED by the City Council of Toquerville City, Utah, as follows:

1. AMENDMENT TO CHAPTER 19 (SUBDIVISIONS) OF TITLE 10 (LAND USE REGULATIONS). Chapter 19 of Title 10 of the Toquerville City Code is hereby amended to include two new Articles (Article I & Article J) as follows:

**ARTICLE I
PUBLIC FACILITY REIMBURSEMENTS**

10-19I-1: PURPOSE AND POLICY:

A. Purpose: The purpose of this Article is to require contribution toward development costs by those benefiting therefrom and establish a method of fairly allocating proportionate costs of Public Facilities, including Project Improvements and System Improvements associated with real estate development.

B. Policy: It shall be the policy of the City that, as a condition of development approval, each Developer should pay a reasonable share of the costs of Public Facilities that are roughly proportionate to the impact of the development. Such proportionate share is to be determined in a fair and equitable manner. This policy may be implemented through the use of impact fees, connection fees, dedication of real property, construction and dedication of improvements, reimbursements, or any other lawful method.

10-19I-2: DEFINITIONS:

For the purposes of this Article, the words set forth below shall have the following meanings:

APPLICANT or DEVELOPER: A property owner, or a person/party with consent and authorization from the property owner, who has submitted an application requesting that the City enter into a Reimbursement Agreement or Deferred Improvement Agreement.

DEVELOPMENT ACTIVITY: Any construction or expansion of a building, structure or use, any change in use of a building or structure, or any changes in the use of land that creates an additional demand and need for Public Facilities.

ELIGIBLE SYSTEM IMPROVEMENTS:

A. Public Facilities that are off site or oversized and meeting all of the following criteria:

- 1. They are required as a condition of development approval;*
- 2. They are anticipated to serve future development;*
- 3. 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*
- 4. They are approved by the City in advance of development in accordance with the City's ordinances, rules, regulations, engineering standards and specifications.*

B. Real Property that is dedicated to the City for the use in connection with a System Improvement.

C. Does not include "Project Improvements", 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 adopted level of service standards.

D. Not all Public Facilities are Eligible System Improvements.

IFFP or IMPACT FEE FACILITIES PLAN: Toquerville City's Impact Fee Facilities Plan (as amended from time to time).

MAXIMUM COMPENSATORY AMOUNT: The maximum amount a Developer may be compensated thru a Reimbursement Agreement and as further defined in Section 10-19I-5.G relating to Impact Fee Reimbursement and Credit Agreements and in Section 10-19I-6.C relating to Pioneering Reimbursement Agreements.

PROJECT IMPROVEMENTS: On site 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. Project Improvements are further defined in Utah Code Ann. § 11-36a-102(15).

PUBLIC FACILITIES: are facilities located within the City that are designed to provide services to the community at large. Facilities which do not benefit the public, but rather individual lots or parcels or common areas within a development are not Public Facilities. Public Facilities include, but are not limited to, infrastructure and systems owned and maintained/operated by the City such as roads, rights of ways, buildings, parks, trails, and utility/drainage systems. Public Facilities include System Improvements. Expansion and improvement of Public Facilities may be funded in many ways. However Public Facilities may only be funded with impact fees if the particular Public Facility is designated in the City's Impact Fee Facilities Plan.

REIMBURSEMENT AGREEMENT: means either an Impact Fee Reimbursement and Credit Agreement or a Pioneering Reimbursement Agreement as further defined in this Article.

REIMBURSEMENT COST ALLOCATIONS: 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.

SHORT TERM IFFP IMPLEMENTATION PLAN: A document updated annually by the City indicating Public Facility projects listed in order of priority and dates of planned commencement of construction over the next six (6) year period, as identified in the City's Impact Fee Facilities Plan.

SYSTEM IMPROVEMENTS:

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 City's Impact Fee Facilities Plan that are intended to provide services within the City to the community at large; and

C. Are not Project Improvements. System Improvements are further defined in Utah Code Ann. § 11-36a-102(22).

10-19I-3: RESPONSIBILITIES FOR PUBLIC FACILITY COSTS:

A. As a condition of development approval, a Developer shall be required to install Public Facilities which are reasonably necessary to serve the proposed development at adopted level of service standards. Where required by the City Engineer to connect to existing Public Facilities with adequate capacity, accommodate future development, or accommodate the City's Impact Fee Facilities Plan, the Developer shall also be required to either: 1) install off-site or oversized Public Facilities reasonably necessary to extend, expand or improve the City infrastructure beyond that which is necessary to serve or benefit the particular development (aka System Improvements); or 2) enter into a Deferred Improvement Agreement pursuant to the provisions of Article J of this Title. Public Improvements specifically listed but not yet built in the City's Impact Fee Facilities Plan may be constructed by a Developer out of the priority sequence identified in the Short Term IFFP Implementation Plan if such construction is acceptable to the City and does not create unreasonable collateral hardships to the City's other Public Facilities.

B. All Public Facility design costs, construction costs, installation costs, and the costs of acquiring and dedicating real property and easements shall be paid by the Applicant/Developer, at their sole expense.

10-19I-4: COMPENSATION FOR DEDICATION OF, OR IMPROVEMENTS TO, PUBLIC FACILITIES:

A. Authorized: Pursuant to this Article, a Developer may request a Reimbursement Agreement for designing, constructing, improving and/or dedicating part or all of a System Improvement.

B. Types of Reimbursement Arrangements: As discussed in more detail throughout this Article, a Developer may request one of two types of reimbursement

arrangements, or a combination of both. The first type of reimbursement arrangement is an impact fee reimbursement and credit arrangement and is accomplished thru an "Impact Fee Reimbursement & Credit Agreement". The second type of reimbursement arrangement is a traditional "public" or "pioneering" reimbursement arrangement and is accomplished through a Pioneering Reimbursement Agreement".

10-19I-5: IMPACT FEE REIMBURSEMENT & CREDIT ARRANGEMENTS:

A. *Impact Fee Reimbursements; Limitations: Reimbursement for an Eligible System Improvement may be made from the impact fees collected and deposited in the City's impact fee account for that type of public facility only. For example, a Developer installing an oversized water line that will not only service the Developer's project but other nearby areas can be reimbursed from only the City's Culinary Water impact fee account – not the City's Transportation impact fee account.*

B. *Impact Fee Credits; Limitations: A Developer may be allowed a credit against impact fees for: 1) the dedication to the City of land, or 2) the improvement to, or new construction of, an Eligible System Improvement so long as the System Improvement is: a) identified in the City's Impact Fee Facilities Plan, and b) the dedication or improvement is required by the City as a condition of approving the proposed Development Activity. Impact Fee Credits can only be received against impact fees of the same type of Public Facility.*

C. *Expiration: The reimbursement or credit for an Eligible System Improvement via impact fees may continue until such time as the cumulative reimbursement and credits reach an amount equal to the Maximum Compensatory Amount for said Improvement or fifteen (15) years from the effective date of the Impact Fee Reimbursement and Credit Agreement. No reimbursement shall be due or payable in excess of the amount of impact fees available, after higher priority projects in City's Short Term IFFP Implementation Plan have been adequately funded.*

D. *Request for Impact Fee Reimbursement and Credit Agreement: A Developer who intends to construct an Eligible System Improvement may submit an application on a form provided by the City, requesting that the City enter into an Impact Fee Reimbursement and Credit Agreement. Reimbursements and Credit given by the City under this Section, will be available only pursuant to a fully executed and effective Agreement. A Developer shall not be eligible to request a reimbursement (but may seek credits) for construction or acquisition of a System Improvement not on the City's Short Term IFFP Implementation Plan.*

E. *Evaluation of Impact Fee Reimbursement & Credit Requests: The City Manager with input and assistance from the City staff shall make an initial review of an Impact Fee Reimbursement and Credit Agreement application and may approve the same for reimbursement so long as it is confirmed that: 1) the proposed Eligible System Improvement to be constructed or acquired is designated*

on the City's Short Term IFFP Implementation Plan (for reimbursements sought, and 2) the City has within its impact fee account for that type of Public Facility sufficient balances after adequately funding higher priority projects to make the reimbursement requested in full. If the City will be required to commit impact fees to be collected in the future to make the necessary reimbursement or if the Applicant has requested impact fee credits, said application shall be passed on to the City Council for final approval at a properly noticed public meeting.

F. Contents of Impact Fee Reimbursement and Credit Agreements: An Impact Fee Reimbursement and Credit Agreement shall contain, at a minimum, the following provisions:

- 1. Identification of the Eligible System Improvement that the Applicant agrees to construct or acquire and dedicate;*
- 2. Estimated cost of the Eligible System Improvement, including acquisition of property and/or easements;*
- 3. Maximum Compensatory Amount to be made available to the Applicant;*
- 4. A statement that the Maximum Compensatory Amount to be made available to the Applicant specifically for the acquisition of property interests, easements or otherwise, not to exceed one hundred fifteen percent (115%) of a City approved MAI certified appraisal provided to the City at the Applicant's expense;*
- 5. Requirements for documentation, acceptable to the City Engineer, verifying actual costs of Eligible System Improvements;*
- 6. Waiver and a covenant not to sue, which provision shall be in a form acceptable to the City Attorney;*
- 7. No interest shall be paid on any amounts due under the Agreement;*
- 8. Requirements for modification of the Agreement by written amendment, executed by the parties to the Agreement; and*
- 9. A provision which clearly indicates that the Impact Fee Reimbursement and Credit 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.*

G. Maximum Compensatory Amount in Impact Fee Reimbursement and Credit Agreements:

1. *The Maximum Compensatory Amount that may be received by a Developer in the form of impact fee reimbursements or impact fee credits shall be established by the City, in the sole discretion of the City, and may be less than that requested by the Applicant.*

2. *No interest shall be included in the Maximum Compensatory Amount and no interest shall be paid to the Developer by the City or any other person on amounts becoming due or being credited.*

3. *In no event shall the Maximum Compensatory Amount exceed the actual cost of constructing the Eligible System Improvement.*

4. *In no event shall the Maximum Compensatory Amount exceed the estimated costs of the Eligible System Improvement identified in the City's Impact Fee Facilities Plan upon which the impact fee was established or last modified.*

5. *The Maximum Compensatory Amount shall be clearly set forth in the Impact Fee Reimbursement and Credit Agreement, or validly executed amendment, unless additional reimbursement is approved by the City according to Subsection H, below.*

H. Post Completion Payment from Impact Fees or Credits. Upon verification by the City Engineer of the actual cost of a satisfactorily completed Eligible System Improvement, the City Engineer shall recommend the actual impact fee reimbursement or credit amount to the City Manager for the Eligible System Improvement. The City Manager may: a) approve reimbursement/credit of the verified actual costs up to the Maximum Compensatory Amount set forth in the Impact Fee Reimbursement and Credit Agreement; b) approve reimbursement/credit of the verified actual costs up to ten percent (10%) over the Maximum Compensatory Amount, provided that the actual costs are determined by the City Engineer to be reasonable; or c) recommend to the City Council approval or denial of an amendment to the Impact Fee Reimbursement and Credit Agreement increasing the Maximum Compensatory Amount.

10-19I-6: PIONEERING/PUBLIC REIMBURSEMENT ARRANGEMENTS:

A. Pioneering/Public Reimbursements: Reimbursement for the design, construction, acquisition and dedication of part or all of a System Improvement may be made thru a Developer and the City entering into an agreement ("Pioneering Agreement") whereby an area is identified and defined which will benefit from the Developer's construction, of a System Improvement which does not directly benefit the City at large ("Benefit District") and after property owners within the Benefit District are given notice and an opportunity to be heard at a public hearing, the City covenants to collect an equitable "Reimbursement Charge" from each property owner within the Benefit District at the time they seek and receive a land use approval or permit from the City for a Development Activity

- with the proceeds of collected Reimbursement Charges being remitted to the Developer, or its successors or assigns on a quarterly basis.

B. Process: If a Developer is required to construct a System Improvements as a condition of approval of a proposed Development Activity and the required Improvements have the capacity and capability of serving and are designed to serve and directly benefit additional properties in the vicinity, said Developer may apply to the City for a Pioneering Reimbursement Agreement as provided in this Section.

1. Application: A Developer requesting a Pioneering Reimbursement Agreement shall submit an application on a form provided by the City and shall provide information as required by the City Engineer, including the area of the proposed Benefit District.

2. Evaluation of Pioneering Reimbursement Requests: It shall be the policy of the City to evaluate applications for Pioneering Reimbursements 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 System Improvement, once constructed. It is anticipated that each situation will have its own unique features and characteristics, and therefore each Pioneering Reimbursement application granted will be formalized with a written Pioneering Reimbursement Agreement that may use one or more calculation 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 System Improvement.

3. Notice and Hearing: The City Council shall hold a public hearing on the application for a Pioneering Reimbursement Agreement. At least ten (10) days before the hearing the City shall notify each "Benefitted Property" owner within the proposed Benefit District in writing, advising of the hearing and providing a copy of the proposed Pioneering Reimbursement Agreement and staff report that will be submitted to the City Council. In this Subsection, "Benefitted Property" owner means (1) the record owner (as shown on the latest County Assessor's secured real property assessment roll) of each property within the proposed Benefit District and (2) the Applicant. A Benefitted Property owner may file written or oral comments or objections to the application before or at the hearing. No property may be added to a Benefit District unless the notice is sent to the Benefitted Property owner. Failure by a Benefitted Property owner to receive the notice required by this Subsection shall not invalidate a Pioneering Reimbursement Agreement, once approved and executed.

4. City Council Action – Findings: After the public hearing, the City Council may by resolution grant, grant with modification or deny approval of a Pioneering Reimbursement Agreement. Before granting approval, the City Council shall make each of these findings:

a. *The Improvement for which reimbursement is sought is a System Improvement which will, upon completion, be accepted by the City, if constructed to the applicable standards, as determined by the City Engineer;*

b. *The 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;*

c. *The Benefit District proposed in the Pioneering Reimbursement Agreement represents a geographical area of property which will benefit directly and substantially by the Improvement; and*

d. *The method of determining Maximum Compensatory Amount and the amount of the Reimbursement Charge is fair and reasonable to both the Developer financing the construction and the Benefitted Property owner and fairly distributes the cost of construction among all subject parcels in proportion to the estimated benefit each will receive from the proposed Improvement.*

C. *Maximum Compensatory Amount in Pioneering Agreements:*

1. *If the System Improvement for which reimbursement is sought has been constructed and the dedication accepted by the City prior to the Developer requesting a Pioneering Reimbursement Agreement, the Maximum Compensatory Amount eligible for reimbursement shall not exceed the lesser of actual land acquisition and construction cost of the System Improvement as determined by the City, in its sole discretion, or, in the case of an unimproved land dedication, the current fair market value of the land as determined by a MAI certified appraiser chosen by the City and paid for by the Applicant.*

2. *If the System Improvement for which reimbursement is sought has not been constructed and accepted by the City prior to the Developer requesting a Pioneering Reimbursement Agreement, the Maximum Compensatory Amount shall be based on improvement plans and construction cost estimates as approved by the City Engineer. The Maximum Compensatory Amount shall be subsequently modified after the System Improvement has been constructed and accepted by the City and shall not exceed the following:*

a. *The Maximum Compensatory Amount approved with the original Pioneering Reimbursement Agreement; or*

b. *The actual construction cost of the System Improvement as documented by the Applicant and confirmed by the City Engineer or the fair market value in the event of dedication of unimproved land as determined by a certified MAI appraiser approved by the City and paid for by the Applicant.*

D. *Calculation of Reimbursement Charge for Benefited Properties: In determining the appropriate Reimbursement Charge to be paid by Benefitted Property owners within the Benefit District, the City shall consider the reasonable cost of the System Improvement, including construction and land costs, and other expenses directly related to the completion of the System Improvement. The City may also consider the expected useful life of the System Improvement, the necessity of the System Improvement for development of the Benefited Properties, prior contributions by Benefitted Property owners, the proportionate benefit received by each Benefitted Property compared to the benefit received by all properties served by the System Improvement, the intensity of use of the System Improvements by each property served, and any other factors that the City deems fair and equitable.*

E. *Contents of Pioneering Reimbursement Agreement: A Pioneering Reimbursement Agreement shall include, but is not limited to, the following provisions:*

1. *A statement of the total construction cost of the System Improvement, the Developer's equitable share of the cost, and the Maximum Compensatory Amount;*

2. *A map approved by the City Engineer showing each Benefitted Property included within the Benefit District and a list of each Benefitted Property by County Assessor parcel number;*

3. *The method of spreading the Maximum Compensatory Amount under the Agreement to the Benefitted Properties within the Benefit District and the rate of interest or appreciation to be added to Reimbursement Charges during the period of the Pioneering Reimbursement Agreement, which shall be the average prime rate for the year immediately preceding each anniversary date the Reimbursement Charge was in effect as determined by Bank of America, N.A.;*

4. *A provision indicating who the party is that should receive the reimbursement, i.e., whether the Developer, the property owner of record, or an assignee by contract;*

5. *The date on which the Pioneering Reimbursement Agreement takes effect and Benefitted Property owners pay the Reimbursement Charge;*

6. *A statement that no Reimbursement Charges collected by the City may be distributed to the designated recipient until the System*

Improvement is completed and accepted by the City as being in compliance with its standards and specifications for public improvements;

7. *A list of the administrative costs, if any, to be charged by the City to administer the Pioneering Reimbursement Agreement. These costs may be shown as a percentage of the charges collected by the City;*

8. *A provision that reimbursement to the Developer or other designated recipient shall be paid only from charges collected by the City under the Pioneering Reimbursement Agreement from the Benefited Properties listed in the Agreement as such properties receive a land use entitlements and permits to commence Development Activity.*

9. *A provision that reimbursement to the Developer or designated recipient shall be paid only from such charges collected within fifteen (15) years from the effective date of the Pioneering Reimbursement Agreement, unless a different time period is approved by the City Council; and*

10. *A provision that the City is not liable to the party financing the System Improvement or the assigned recipient for failure of the City to collect a Reimbursement Charge due from a Benefitted Property owner or because of legal inability of the City to collect the charge from a Benefitted Property.*

F. *Recordation of Pioneering Reimbursement Agreements. The City shall have an approved and fully executed Pioneering Reimbursement Agreement, including a list of the properties within the Benefit District, recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.*

G. *Release from Liability for Payment: The City shall, in all cases, be immune and not liable for any payments to the party financing the Public Improvement or assignee if a Pioneering Reimbursement Agreement is determined by a court of law to be illegal, unconstitutional, or otherwise unenforceable for any reason.*

10-19I-7: EXPIRATION OF REIMBURSEMENT OBLIGATIONS:

Reimbursement for construction of System Improvements as set forth in Section 10-19I-4 of this Article thru impact fee reimbursements and impact fee credits and as set forth in Section 10-19I-6 of this Article regarding Pioneering Reimbursement Agreements shall expire a maximum of fifteen (15) years after the effective date of the Agreement, or at such time as the cumulative reimbursement and credit amount reaches the Maximum Compensatory Amount, whichever event occurs first. No Reimbursement shall be due, payable or creditable after said fifteen (15) year period.

10-19I-8: APPEAL OF MAXIMUM COMPENSATORY AMOUNT AND REIMBURSEMENT CHARGES:

In the event that a Developer disagrees with the City's determination of the Maximum Compensatory Amount or a Benefited Property owner disagrees with the City's determination of the Reimbursement Charge to which his/her/its property is subject, either affected party may challenge the methodology or sum of the Maximum Compensation Amount or Reimbursement Charge by submitting notice of such appeal to the City Recorder within ten (10) calendar days of the City approving the Reimbursement Agreement. Within ten (10) calendar days of the City's receipt of the appeal, the City Manager shall conduct an informal hearing to receive any further information or argument from the party making the appeal and, in consultation with the City Attorney and City Council shall render a written decision within an additional ten (10) calendar days of said hearing; provided that he/she may, for good cause, extend the time to render a decision. The City Manager's decision shall be final.

ARTICLE J

PUBLIC FACILITY INSTALLATION, CONNECTIONS AND DEFERRALS

10-19J-1: DEFINITIONS:

For the purposes of this Article, the defined words in Article I of this Chapter and the words set forth below shall have the meanings prescribed to them throughout this Article:

APPLICANT or DEVELOPER: A property owner, or a person/party with consent and authorization from the property owner, who has submitted an application requesting that the City enter into a Reimbursement Agreement or Deferred Improvement Agreement.

DEFERRED IMPROVEMENT AGREEMENT: An agreement for either the deferred design, dedication or installation (or combination) of one or more Public Facilities or private improvements – either fully or partially.

DEFERRED IMPROVEMENTS: Public Facilities and private improvements for which construction is deferred according to a Deferred Improvement Agreement entered into pursuant to the provisions of this Article.

DEVELOPMENT or DEVELOPMENT ACTIVITY: Any construction or expansion of a building, structure or use, any change in use of a building or structure, or any changes in the use of land that creates an additional demand and need for Public Facilities

LARGE SCALE DEVELOPMENT: Any Development of an entire residential subdivision (or phase thereof) or a multi-building commercial development (or

phase thereof) within the City. The Development of individual residences or singular commercial buildings do not constitute a Large Scale Development.

***PUBLIC FACILITIES:** are facilities located within the City that are designed to provide services to the community at large. Facilities which do not benefit the public, but rather individual lots or parcels or common areas within a development are not Public Facilities. Public Facilities include, but are not limited to, infrastructure and systems owned and maintained/operated by the City such as roads, rights of ways, buildings, parks, trails, and utility/drainage systems.*

***SMALL SCALE DEVELOPMENT:** Any development of an individual building lot or commercial site or pad including the construction of site improvements and a residence or singular commercial building.*

10-19J-2: INSTALLATION OF IMPROVEMENTS WITH DEVELOPMENT:

A. Installation of Improvements: Development of real property shall include: 1) construction and installation of all private improvements required as a condition of development approval; and 2) construction and dedication to the City of all Public Facilities, including but not limited to, streets, sidewalks, open space, sanitary sewer, storm drain, culinary water, power and natural gas improvements and trails that are intended to become part of the City's infrastructure and utility systems.

B. Connection to Public Facilities: Unless otherwise specifically stated in this Article, connection to the City's Public Facilities shall be required for all property being developed. If any or all of the City's infrastructure and utility systems are not available for connection at the property boundary of the development, the Developer shall extend, improve and dedicate the required City infrastructure and utility systems. Design, construction and dedication of Public Facilities shall conform to the applicable provisions of the City's Code, the City's master plans, the City's standards and specifications for public improvements, and other applicable regulations.

C. Design Approval Required: Construction of all Public Facilities and connections thereto shall be completed pursuant to engineering plans acceptable to, and released for construction by, the City Engineer pursuant to section 10-19J-3, below.

10-19J-3: TIMING OF DEDICATION:

A. Dedication Recorded with Plat: If a subdivision plat or commercial site plan is being recorded, dedication of real property for all Public Facilities shall be contained in the plat or, where appropriate, by recording a separate conveyance with the plat. Dedication shall occur before or concurrently with plat recordation. The dedication shall be in a form acceptable to the City Attorney and shall be subject to the dedication requirements of this Section.

B. Recorded Prior to Building Permit: If no subdivision plat or commercial site plan is required, dedication of real property for Public Facilities shall be in a form acceptable to the City Attorney and shall be recorded prior to issuance of any building permit or special use permit.

10-19J-4: TIMING OF DESIGN:

The design of all Public Facilities shall be completed by the Applicant and accepted by the City Engineer prior to granting final development approval, prior to recording a final plat or commercial site plan and prior to issuing building permits related to a Large Scale Development.

10-19J-5: GUARANTEE/WARRANTY OF COMPLETED PUBLIC FACILITIES:

Developers shall guarantee or warranty all Public Facilities constructed by them for a period of one year from inspection and acceptance by the City thru providing a warranty bond in the amount of twenty five percent (25%) of the actual cost to construct the Public Facility deposited in cash with the City or with an FDIC insured bank licensed to do business in the State of Utah pursuant to a Cash on Deposit Agreement executed by the City, the Developer and the bank

10-19J-6: INSTALLATION OF PUBLIC FACILITIES FOR LARGE SCALE DEVELOPMENTS; DEFERRED INSTALLATION:

A. Unless deferred pursuant to Subsection B, below, a Developer of a Large Scale Development must complete the design and installation of all required Public Facilities and improvements and connect said Public Facilities to the City's infrastructure prior to the recording of a subdivision plat or commercial site plan.

B. Notwithstanding the requirement for installation of Public Facilities and connection to the City's existing infrastructure prior to recording a final plat or commercial site plan for a Large Scale Development, said installation and connection may be partially or fully deferred pursuant to a Large Scale Deferred Improvement Agreement entered into pursuant to this Section 5.

C. Installation and Connection Prior to Building Permit: Unless installation and connection of a Public Facility is deferred in accordance with the provisions of this Section and a Large Scale Deferred Improvement Agreement expressly authorizing the issuance of building permits prior to said installation, the City shall not issue building permits until construction of all Public Facilities are complete and fully accepted by the City and the Public Facilities are connected to the City's existing infrastructure.

D. Process for Deferral of Public Facilities in Large Scale Developments:

1. *Application: A Developer may submit an application requesting to defer construction of part or all of one or more Public Facilities to be located within or offsite from a Large Scale Development until such time as the City, in its sole discretion, may determine the installation of said Public Facilities are necessary for the health, safety and general welfare of the development and/or other surrounding properties.*

2. *City Council Determination: The City Council shall review the Developer's application for deferred construction of part or all of a Public Facility relating to a Large Scale Development. The City Council may approve the application and allow the Developer, future property owner, future developer or City to design and construct part or all of one or more Public Facilities at a later date if City Council finds all of the following:*

a. *The City Engineer has prepared, and the City Council has reviewed an analysis of the likely timeframe in which the Public Facilities requesting to be deferred will be necessary and needed; and*

b. *Based on physical characteristics of the Large Scale Development and affected real property it is not feasible or desirable to install part or all of the Public Facilities before recording of the final plat or commercial site plan. The cost of installation of a Public Facility shall not be a factor in determining feasibility; and*

c. *The deferred Public Facilities are not necessary for public health, safety or general welfare of the City and its residents or as a prerequisite to orderly development of the surrounding area.*

E. *Large Scale Deferred Improvement Agreement Required: If a Developer applies for deferred design and construction or partial construction of one or more Public Facilities within a Large Scale Development related there to, a proposed Large Scale Deferred Improvement Agreement may be presented by the Developer or the City staff for City Council consideration. The terms and conditions shall include the date or timing triggers for future construction of part or all of a Public Facility or Public Facilities being deferred and may include requirements for provision of a financial guarantee, recordation of the Large Scale Deferred Improvement Agreement in the Official Records on file in the Office of the Recorder of Washington County, State of Utah and other reasonable terms. The City Council may accept, reject or modify the proposed Large Scale Deferred Improvement Agreement, at its sole discretion.*

10-19J-7: LARGE SCALE DEFERRED IMPROVEMENT AGREEMENTS.

A. Application for Large Scale Deferred Improvement Agreement: An application shall be required prior to consideration by the City of a Large Scale Deferred Improvement Agreement.

1. Timing: The application shall be submitted prior to or concurrent with the application for final subdivision approval, final subdivision phase approval, final site plan approval or final site plan phase approval. Untimely applications may be rejected by City staff and not considered.

2. Contents: The application shall include a proposed Large Scale Deferred Improvement Agreement which complies with all City ordinances, policies and procedures in effect at the time the application is submitted, and shall also contain all information reasonably requested by City staff.

B. Minimum Contents of Large Scale Deferred Improvement Agreement: a proposed Large Scale Deferred Improvement Agreement shall address, at a minimum, the following:

1. Public Facilities: All Public Facilities or required improvements for which deferral is requested shall be identified. Public Facilities not identified in a proposed Large Scale Deferred Improvement Agreement shall not be deferred.

2. Legal Description: The Large Scale Deferred Improvement Agreement shall contain a legal description of the property being developed, which legal description is sufficient for recording.

3. Timing: The Large Scale Deferred Improvement Agreement shall address the timing of construction of the deferred Public Facilities. If appropriate, the timing may be determined by the occurrence of future events such as, but not limited to, a City project or private development project, passage of time or other reasonable method.

4. Attorney Fees: The Large Scale Deferred Improvement Agreement shall provide that in the event of litigation occasioned by any default of the Developer, the Developer agree to pay all costs involved, including reasonable attorney fees, and that the same shall become a lien against the property.

5. Form: The Large Scale Deferred Improvement Agreement shall be in a form acceptable to the City Attorney.

6. *Waiver and Cooperation: The Large Scale Deferred Improvement Agreement shall indicate that the Developer shall waive all right to oppose any City creation of an assessment area and promise to participate in any City project to complete the construction of the Public Facilities identified in the Large Scale Deferred Improvement Agreement. Said waiver shall be binding upon Developer's successors and assigns.*

7. *Other Provisions: Any other provisions required by the City as reasonably necessary to effectuate the purposes and provisions of this Article.*

C. *Recording: The Large Scale Deferred Improvement Agreement shall be recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah, by the City at the expense of the Developer and shall run with and be a burden upon the land. The recorded Large Scale Deferred Improvement Agreement shall constitute notice to all successors and assigns of title to the real property of the obligations set forth therein, and shall also constitute a lien in such amount necessary to fully reimburse the City for the actual costs described in this Article, subject to foreclosure in the event of a default in payment.*

10-19J-7: INSTALLATION OF PUBLIC FACILITIES FOR A SMALL SCALE DEVELOPMENT; DEFERRED INSTALLATION:

A. *Unless deferred pursuant to Subsection B, below, a Developer of a Small Scale Development must complete the design and installation of all required Public Facilities and improvements and connect said Public Facilities to the City's infrastructure prior to the issuance of a building permit to commence construction.*

B. *Notwithstanding the requirement for installation of Public Facilities and connection to the City's existing infrastructure prior to the issuance of a building permit and commencement of construction on a Small Scale Development, said installation and connection may be partially or fully deferred pursuant to a Small Scale Deferred Improvement Agreement entered into pursuant to this Section 7.*

C. *Process for Deferral of Public Facilities in a Small Scale Development:*

1. *Application: A Developer may submit an application requesting to defer construction of part or all of one or more Public Facilities located upon or adjacent to a Small Scale Development until such time as the City, in its sole discretion, may determine the installation of said Public Facilities are necessary for the health, safety and general welfare of the development and/or other surrounding properties.*

2. *City Council Determination: The City Council shall review the Developer's application for construction of part or all of a Public Facility located upon, servicing, relating to, or adjacent to, a Small Scale*

Development. The City Council may approve the application and allow the Developer, future property owner, future developer or City to construct part or all of one or more Public Facilities at a later date if City Council finds all of the following:

a. The City Engineer has prepared, and the City Council has reviewed an analysis of the likely timeframe in which the Public Facilities requesting to be deferred will be necessary and needed; and

b. Based on physical characteristics of the Small Scale Development and affected real property it is not feasible or desirable to install part or all of the Public Facilities before issuing a building permit and the commencement of construction. The cost of installation of a Public Facility shall not be a factor in determining feasibility; and

c. The deferred Public Facilities are not necessary for public health, safety or general welfare of the City and its residents or as a prerequisite to orderly development of the surrounding area.

D. Small Scale Deferred Improvement Agreement Required: If a Developer applies for deferred construction or partial construction of one or more Public Facilities within, related to, adjacent to, or servicing a Small Scale Development, a proposed Small Scale Deferred Improvement Agreement may be presented by the Developer or the City staff for City Council consideration. The terms and conditions shall include the date or timing triggers for future construction of part or all of a Public Facility or Public Facilities being deferred and may include requirements for provision of a financial guarantee, recordation of the Small Scale Deferred Improvement Agreement in the Official Records on file in the Office of the Recorder of Washington County, State of Utah and other reasonable terms. The City Council may accept, reject or modify the proposed Large Scale Deferred Improvement Agreement, at its sole discretion

10-19J-8: SMALL SCALE DEFERRED IMPROVEMENT AGREEMENTS:

A. Application for a Small Scale Deferred Improvement Agreement: An application shall be required prior to consideration by the City of a Small Scale Deferred Improvement Agreement.

1. Timing: The application shall be submitted prior to or concurrent with the application for a building permit and the commencement of construction. Untimely applications may be rejected by City staff and not considered.

2. Contents: The application shall include a proposed Small Scale Deferred Improvement Agreement which complies with all City

ordinances, policies and procedures in effect at the time the application is submitted, and shall also contain all information reasonably requested by City staff.

B. Minimum Contents of a Small Scale Deferred Improvement Agreement: The proposed Small Scale Deferred Improvement Agreement shall, at a minimum, address the following:

1. Public Facilities: All Public Facilities or required improvements for which deferral is requested shall be identified. Improvements not identified in the Small Scale Deferred Improvement Agreement shall not be deferred.

2. Legal Description: The Small Scale Deferred Improvement Agreement shall contain a legal description of the property being developed, which legal description is sufficient for recording.

3. Cash Deposit: The Deferred Improvement Agreement shall dictate the amount of a cash deposit, if any, the City will require Developer to escrow with the City and shall specify the terms and conditions of expending and releasing the cash deposit.

4. Timing: The Small Scale Deferred Improvement Agreement shall address the timing of the construction of the deferred Public Facilities. If appropriate, the timing may be determined by the occurrence of future events such as, but not limited to, a City project or private development project, passage of time or other reasonable method.

5. Attorney Fees: The Small Scale Deferred Improvement Agreement shall provide that in the event of litigation occasioned by any default of the Developer or Property Owner, the Developer or Property Owner agree to pay all costs involved, including reasonable attorney fees, and that the same shall become a lien against the property.

6. Form: The Small Scale Deferred Improvement Agreement shall be in a form acceptable to the City Attorney.

7. Waiver and Cooperation: The Developer shall waive all right to oppose any City creation of an assessment area and promise to participate in any City project to complete the deferred construction of the Public Facilities identified in the Small Scale Deferred Improvement Agreement. Said waiver shall be binding upon Developer's successors and assigns.

8. Other Provisions: Any other provisions required by the City as reasonably necessary to effectuate the purposes and provisions of this Article.

C. *Recording: The Small Scale Deferred Improvement Agreement shall be recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah, by the City at the expense of the Developer and shall run with and be a burden upon the land. The recorded Small Scale Deferred Improvement Agreement shall constitute notice to all successors and assigns of title to the real property of the obligations set forth therein, and shall also constitute a lien in such amount necessary to fully reimburse the City for the actual costs described in this Article, subject to foreclosure in the event of a default in payment.*

2. **REPEALER.** This Ordinance shall repeal and supersede all prior ordinances and resolutions governing the same.

3. **SAVINGS CLAUSE:** If any provision or clause in this Ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Ordinance are declared to be severable.

4. **EFFECTIVE DATE.** This Ordinance shall take effect immediately upon approval by the City Council.

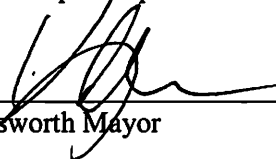
PASSED AND APPROVED this 19th day of January, 2022.

Council Person:

Justin Sip	AYE	<input checked="" type="checkbox"/>	NAE	<input type="checkbox"/>	ABSTAIN	<input type="checkbox"/>	ABSENT	<input type="checkbox"/>
Ty Bringhurst	AYE	<input type="checkbox"/>	NAE	<input type="checkbox"/>	ABSTAIN	<input type="checkbox"/>	ABSENT	<input checked="" type="checkbox"/>
Rachel Peart	AYE	<input checked="" type="checkbox"/>	NAE	<input type="checkbox"/>	ABSTAIN	<input type="checkbox"/>	ABSENT	<input type="checkbox"/>
John 'Chuck' Williams	AYE	<input type="checkbox"/>	NAE	<input type="checkbox"/>	ABSTAIN	<input type="checkbox"/>	ABSENT	<input checked="" type="checkbox"/>
Gary Chaves	AYE	<input checked="" type="checkbox"/>	NAE	<input type="checkbox"/>	ABSTAIN	<input type="checkbox"/>	ABSENT	<input type="checkbox"/>

TOQUERVILLE CITY
a Utah municipal corporation

Attest:



Keen Ellsworth Mayor



Dana M. McKim, City Recorder