

CITY OF DURHAM NORTH CAROLINA

MEMORANDUM

May 9, 2005

To: Patrick W. Baker, City Manager

Through: Theodore L. Voorhees, Assistant City Manager
Kathryn R. Kalb, Director of Public Works

From: R. Lee Murphy, Manager of Engineering

Subject: Water and Sewer Facility Construction Reimbursement Policy

Executive Summary

In 2002, at the direction of Council, staff prepared an ordinance that would allow the City to enter into agreements with developers that would provide future reimbursements for construction costs for sewer improvements in certain geographic areas adjacent to the City. The attached ordinance modification allows the policy to apply to both water and sewer improvements and to improvements serving basins of a larger size than the original ordinance allowed. When applied, this ordinance would allow for reimbursement of costs to developers of a wide range of infrastructure improvements that generally exceed those of a typical Durham development. The reimbursement would come either from future developers in the area, or possibly from the ultimate customers in the area. If the reimbursement were from developers, this policy change could be implemented without further ordinances. If it were from ultimate utility customers, further ordinance changes, establishment of fees, and possibly special legislation would be required. Individual agreements for specific improvements in specific areas must be approved by the City Council for this ordinance change to be used.

This has been a longstanding issue of fairness for the development community. The Administration believes it has put together a workable solution that will foster private sector financing of many future utility system expansions in an equitable way. Therefore, it is recommended that the City Council adopt the attached ordinance amending existing Section 23-18.2 of the Durham City Code.

Background

Historically, the City has not provided significant reimbursement options to developers nor has the City chosen to routinely fund the extension of major components of the City's water distribution system and sewage collection system in advance of new development. At times this has hampered the orderly expansion of those systems. There are several large areas in the City's service area needing major water and sewer components to be able to serve their respective areas. In these cases, water and sewer components serve much more than the individual developments and are too expensive to be absorbed by any one or two large developments. This proposed ordinance change would allow the City to establish special geographic areas where unique additional payments are collected from developers in those areas. In addition, it is the first step towards possibly allowing fees to be collected and paid only by new customers in the benefited

area. The ordinance provides that the City would not be required to reimburse the original developers who have made the expenditures for the infrastructure if the City did not collect any fees from new developers or from new customers in the area. In addition, it allows the City to retain an amount for administrative expenses in administering the program. Similar such systems are in place in many jurisdictions throughout North Carolina.

Alternatives

The recommended alternative is to adopt the attached ordinance amendment which will allow for the establishment of a fee system to reimburse portions of the costs paid by private developers to extend or expand the City's water and sewer facilities within defined service areas.

One alternative is to not approve the ordinance amendment which will leave large areas within the Urban Growth Area (UGA) un-served. This is not recommended.

Another alternative is to use City funds to construct major facilities in advance of new development. At this time, that is not recommended given the current budget constraints.

Financial Analysis

If the City Council approves this ordinance amendment and later enters into individual agreements for specific improvements in specific areas it will result in no cost to the City. It will facilitate development in un-served areas of the UGA and allow for an equitable system for developers to partially recover their cost of making improvements that serve areas much larger than what is needed for their individual development. Accordingly, this should shift system expansion costs away from the City and its ratepayers toward private developers. It should also facilitate further growth in the construction industry and help to expand the City's tax base.

SDBE Summary

There are no SDBE issues identified at this time.

Recommendation

It is recommended that the City Council adopt the attached ordinance amending Section 23-18.2 of the City Code.

Attachments

C: Terry Rolan, Director of Water Management

**ORDINANCE AMENDING SECTION 23 OF THE DURHAM CITY CODE,
WATER AND SEWER SYSTEMS, TO REPLACE 23-18.2 AND TO ALLOW THE
CITY TO ENTER INTO AGREEMENTS REGARDING REIMBURSEMENT OF
CERTAIN DEVELOPER-CONSTRUCTED WATER AND SEWER COSTS**

WHEREAS it is in the public interest and the best interest of the City of Durham to more equitably distribute the costs of certain water and sewer capital expenditures so that future users who benefit from those improvements will help pay for their cost;

WHEREAS the City wishes to amend Section 23-18.2 to broaden its reach and achieve this end;

NOW, THEREFORE, be it resolved by the City Council of the City of Durham that:

SECTION ONE

Existing Section 23-18.2, "Authority to contract to provide reimbursement for the cost of certain sewer facilities and to require payment by future developers for such facilities as a precondition of connection" is hereby deleted in its entirety and replaced with the following:

"Sec. 23-18.2 Agreements for reimbursement of cost of facilities built by private developers

The City may enter into agreements that provide for the potential future reimbursement of a portion of the construction costs of certain water and sanitary sewer facilities ("developer-constructed facilities") when the facilities have been designed at the City's direction to take into account City-determined needs regarding existing or future development and, in addition, when the scale, scope, or size of the developer-constructed facilities are atypical and substantially larger than what is needed for that specific development, or other unique circumstances apply. Without limiting the City's authority under general law or ordinance, only sewer outfalls 10 inches in diameter or larger, force mains and sewer pump stations that require a receiving sewer outfall 10 inches in diameter or larger, water mains larger than 16 inches, booster stations, flow control valves, above ground storage, and applicable engineering costs shall be eligible for reimbursement in the agreements authorized under this section. Reimbursement shall be limited to payments from future users that benefit from the developer-constructed facilities. Such future users may include developers of future projects and/or water or sewer customers within those projects. In addition to any other fees provided by law or ordinance, the City may require such future users to pay a fair portion of the cost of the developer constructed facilities as a precondition of connection to the water and/or sewer system. If fees are imposed on future water and/or sewer customers, additional ordinances and fee resolutions shall be passed implementing such changes. The City shall reimburse the party to an agreement made under this section after future users make payments to the City. The City shall develop written policies consistent with this

ordinance that apportion the original documented costs of the developer constructed facilities subject to agreements amongst future users in a fair and equitable manner, as determined in the sole discretion of the City. Agreements under this section shall, among other things, specify the time period for which reimbursements shall apply. In addition, agreements shall provide for a reasonable administrative charge to be retained by the City for the City's expense in administering the reimbursement program. No agreement shall obligate the City to reimburse costs of developer constructed facilities if payments are not received for any reason, nor shall any agreement limit the City's authority to modify this ordinance. This ordinance shall not limit the City's authority under any other section of Chapter 23."