

**TOWN OF BUENA VISTA, COLORADO  
ORDINANCE NO. 4  
(SERIES OF 2015)**

**AN ORDINANCE OF THE TOWN OF BUENA VISTA, COLORADO,  
IMPEMENTING COST RECOVERY REGULATIONS FOR  
DEVELOPMENT INFRASTRUCTURE**

**WHEREAS**, the Town has the authority to require the construction of public improvements as a condition of development of land within the Town;

**WHEREAS**, the Town believes generally that development should pay its own way and that the costs of constructing public improvements in new development should not be borne by the citizens of the Town;

**WHEREAS**, the Town recognizes that in certain instances it is beneficial and effective to require oversizing of public improvements so that the Town is properly and adequately addressing and planning for future development;

**WHEREAS**, under those instances, the Town believes that the future development should pay its proportional share of those public improvements; and

**WHEREAS**, in order to address those instances, the Town desires to institute a method in order to address cost recovery for developers required to construct oversized public improvements.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA, COLORADO:**

**Section 1.** Section 17-46 is amended by the addition of a new subsection (i) as follows

- (i) **Cost Recovery.** Subject to the provisions of this subsection, the Town may also require, as a condition of any approval required under this Chapter 17, the dedication of such additional roadway, public access rights of way, and easements and the construction or installation of such other or additional public improvements as are reasonably necessary for the orderly and logical extension of Town facilities and services within the Town as a whole.

1. Procedures - Recovery and Participation Costs

(a) Findings

- (i) The Board of Trustees hereby finds and determines that expansion of land use and development within the Town results in impacts upon public facilities and improvements and necessitates the construction and expansion of new public facilities, improvements, and services, including arterial and

collector streets and bridges; water and sewer facilities; schools; pedestrian areas and community and neighborhood parks; police and fire services; drainageways; parking facilities; and other Town facilities, improvements, and services.

- (ii) The Board of Trustees further finds and determines that it is appropriate and fair to require new development, not current citizens, to bear such proportionate share of the cost of improvements, facilities, and services as the Town determines are reasonably necessitated by and of reasonable benefit to new development.
- (iii) The Board of Trustees further finds and determines it is fair, reasonable, and equitable for the Town to plan for and provide facilities, improvements, and services necessary for the efficient and logical development of land within the Town and to recover at or prior to development the cost of such facilities, improvements, and services from the properties benefitted by such facility, improvement, or service.
- (iv) The Board of Trustees additionally finds that new public facilities, improvements, and services increase the value of and enhance the development potential of adjacent properties.

(b) Recovery of Costs of Public Improvements

- (i) The Town shall have the authority to allocate and recover the costs of construction of public improvements or facilities to property owners based on the benefit of such improvement, facility, or service to said owners. Said recovery costs shall be paid to the Town by the benefitted property owner and forwarded to the party constructing the improvement or facilities. Subject to the provisions of subsection (i)(1)(e)(iii) below, where the construction of the improvement or facility has been financed in whole or in part by a property owner or owners, and the financed amounts exceed the amount of benefits the owner or owners will realize from the improvement or facility so financed, the Town shall assume or recover the amount of such excess costs and reimburse the financing owner or owners to the extent the amount financed exceeds the benefits received.
- (ii) As part of any approval for an application for a minor or intermediate development or approval of a preliminary plan for a major development within the Town, the Town may determine the public facilities, improvements and services that are reasonably necessitated by and that are of reasonable benefit to the land being developed. The Town shall have authority to establish and administer a program to

recover from benefitted property owners the costs incurred by the Town or other party in providing those public facilities, improvements, and services, which may include without limitation:

- (1) The cost of right-of-way acquisition and construction of streets, including traffic signals, street lights, and traffic signs.
  - (2) The cost of sanitary sewer and water treatment and transmission facilities and service.
  - (3) Costs incurred for the acquisition, construction and servicing of drainageways.
  - (4) The cost of locating or relocating above-ground or underground utilities.
  - (5) Costs incurred for the acquisition, development, and furnishing of neighborhood and community parks, public open spaces, pedestrian walkways, bikeways, and other recreational facilities in excess of normal development requirements.
  - (6) Costs incurred for the acquisition, development, construction, and furnishing of such other Town facilities or services the Town determines are reasonably necessary to serve, and of reasonable benefit to, new development.
- (iii) The Town may require a developer to provide and install public improvements, facilities, or services sufficient to serve surrounding lands that the Town determines are necessary for sound service planning and future property development. The Town shall collect from the owners of those properties benefitted by such facilities such amounts that the Town determines to be reasonable and in proportion to the benefits to such properties. From such collection, the Town shall reimburse the party who installed the public facility.
- (iv) In connection with the construction of any improvement or facility by a property owner or developer pursuant to this Section, the Town and such owner or developer may enter into a written agreement concerning the construction and the owner or developer's rights of cost recovery, if any, as follows:
- (1) Agreement may include provision for simple interest
  - (2) In each such agreement, the Town shall require that the developer or his successors notify the Town in the event that there is a change in the payee of recovery fees collected for disbursement by the Town. This notice shall be provided no later than thirty (30) days after the effective date of the change

in payee. This notification shall include the new payee, the payee's address, a description of the event resulting in the change of the payee, and the effective date of the change in payee. The notice shall be signed by an individual with legal authority to bind the transferor. The Town shall send collected recovery fees to the payee of record, as set forth in this paragraph (2). If, due to lack of notice by the payee, the Town is unable to ascertain the identity or location of the payee within sixty (60) days after receipt of the recovery fees, such fees shall revert to the Town, and the Town may declare the agreement terminated and deposit the undisbursed recovery fees in the Town's general fund for Town use.

- (c) Allowable Costs. Costs that are otherwise recoverable pursuant to this Section shall be limited to the actual costs of materials, labor, equipment, acquisition of rights-of-way and easements, including condemnation costs, engineering services, and other costs directly related to the construction of the improvements. Costs for the administration of contracts, license fees, attorney fees, overhead, and other administrative, indirect costs shall be considered as the cost of doing daily business and shall not be included in recovery costs.
- (d) Town Contribution. Under certain circumstances and in its sole discretion, the Town may choose to contribute to the costs of construction of public improvements or provide incentives to off-set the costs of public improvements in cases of preferred developments, such as affordable housing.
- (e) Method for Recovery of Costs
  - (i) The Town shall establish cost recovery for public improvements based upon the benefit to the development. Such methods may include comparative area or distance of a development benefited by a public improvement, comparative population or housing density of the development benefited by the public improvement, the trip generation rate, or other methodology for calculating approximate use of the public facilities, and such other methods as the Town may establish from time to time that are based upon the reasonable benefit conferred on a development by a public facility. For public facilities, cost recovery obligations shall be based on the following:
    - (1) Water Mains. The owner or developer of property abutting a water main constructed and paid for by another party shall pay a proportionate share of the costs determined by dividing one-half (1/2) the total cost of the main by the total length of the main and multiplying the resulting quotient by the number of lineal feet of property abutting the main.
    - (2) Street Improvements. The owner or developer of property

abutting a street constructed and paid for by another party shall pay a proportionate share of the cost of said, street, determined as follows:

- (a) For streets, exclusive of acceleration and deceleration lanes, the owner or developer shall be required to pay fifty percent (50%) of the cost of the improvements, including street pavement, sub-base, storm sewer and other appurtenances, right-of-way costs, curbs, gutters, sidewalks, and acceleration and deceleration lanes adjacent to the development.
  - (b) All drainage and other conduit structures constructed as an integral part of the street shall be considered to be street improvements, and the cost of those facilities may be allocated using the same method as allocating the cost of street improvements. The calculation of recovery costs for other drainage facilities, including storm drainage facilities that are not an integral part of the street construction, shall be established on a case-by-case basis, using a method based upon reasonable benefit to the property. However, the Town's minimum standards on storm drainage facilities must be met in order for a project to receive consideration for recovery.
- (3) In the event the Town determines that a development is reasonably benefitted more than under the minimum recovery methods above, the Town may calculate an alternate method to determine reasonable benefit and recovery costs for a development, provided that there shall be recovered no more than one hundred percent (100%) of the costs of public facilities, plus applicable interest.
- (4) All agreements or ordinances created in connection with the construction of a public improvement for which costs have been allocated pursuant to this Section shall be recorded with the Office of the Chafee County Clerk and Recorder as a matter of public record. It is the responsibility of every developer to identify those recovery agreements that pertain to their developments.
- (f) Documentation and Recording of Recovery Obligations
- (i) Any agreement between the Town and a developer for cost recoveries shall be set forth in the developer's subdivision improvements agreement pursuant to Section 17-46.

- (ii) All such cost recovery agreements for developer-constructed improvements shall include a listing of those properties to be charged with cost recovery for the improvement(s), which list shall be provided by the developer-beneficiary with the final development plan. The developer shall also provide within the same time period a cost estimate of the improvements. The Town shall review and approve for recording all such agreements that include provisions for cost recovery for the benefit of private developers, provided, however, it shall be the responsibility of the developer to record such agreements, and any effect on the developer's ability to recover costs, pursuant to the developer's failure to appropriately record such agreement or include a sufficient legal description for the properties to be charged with cost recovery, shall be the sole responsibility of the developer.
- (iii) The Town's duty and liability in connection with the administration of a cost recovery agreement pursuant to this Section shall be limited as follows. In administering such agreements:
  - (1) The Town shall exercise reasonable care to collect such amounts due the developer beneficiary, but the Town shall not be responsible or liable for any amounts not actually paid to the Town by the responsible party. The developer-beneficiary shall have no cause of action against the Town, other than to recover any amounts actually collected and on deposit with the Town.
  - (2) The Town shall not be deemed to be acting as an agent or fiduciary of the developer-beneficiary or the responsible party. It shall be the exclusive responsibility of the developer-beneficiary to monitor and enforce the payment provisions of the agreement.
  - (3) In the event of non-payment by a responsible party, the developer-beneficiary, in its capacity as principal third-party beneficiary of the agreement, shall have as its exclusive remedy the right to bring a cause of action against the defaulting responsible party.
  - (4) The limitations set forth above shall be deemed as incorporated into every cost recovery agreement to be administered by the Town.

(g) Inclusion of Recovery Costs in Applications or Preliminary Plans

All applications or preliminary plans shall contain a section entitled "Recovery Costs," which shall contain a list of the public facilities previously constructed on which the proposed development will be required to pay recovery costs and the areas of benefit, if applicable, and the Town recording

information for the ordinance and agreement that established the recovery costs. Notwithstanding any of the foregoing to the contrary, the development shall also be responsible for any recovery costs established subsequent to the approval of the application or preliminary plan. However, no recovery cost obligation shall be invalid against a development if it is undiscovered and/or inadvertently omitted from the application or preliminary plan.

(h) Recordation and Lien:

(i) The agreement or ordinance that sets forth the public facilities, the costs thereof, the areas of benefit, and the method of recovery of costs shall be filed and recorded with the County Clerk and Recorder of the county in which the facilities are located and the County Clerk and Recorder of any county in which property may be located that may be reasonably expected to be responsible for such costs, once they have been finally determined.

(ii) From the date of recording of any cost recovery agreement for developer-constructed public improvements, each of the records shall create a first and prior lien upon the properties benefited in the amount of the costs of the public facilities determined by the Town attributable to the property. At its discretion, the Town may allow the lien to become junior to the lien of deed(s) of trust executed by the landowners to secure loans to finance the construction of public facilities on the property.

(i) Payment of Recovery Costs

All recovery costs shall be due and payable at the time of the recording of a final plan for the applicable property, or at such time as application is made for a building permit or water tap for the applicable property, whichever occurs first. The Town may withhold building permits or water service on property within the area of benefit until recovery costs are paid. In the event an owner desires to proceed with development of a portion of his property based on a phased development plan, the owner may proceed after paying that portion of the recovery costs and making provision for payment of the remainder satisfactory to the Town.

(j) Termination of Recoveries

Upon receipt of an application by an owner previously entitled to receipt of cost recoveries or on its own motion, the Town may terminate a recovery for a public improvements, if the costs of the public improvements have been substantially recovered, if the project may be more effectively financed by another method, or for such other good cause as the Town may determine. In no event shall the cost recovery period last longer than ten (10) years.

(k) Alternative Method

This section is intended to establish an alternative method for the financing of public improvements for lands that will be reasonably benefited thereby and the provisions hereof shall not be construed to limit the power of the Town to utilize any other lawful method for accomplishing this purpose.

**Section 3.** Section 17-56(b)(8) is amended to read as follows:

(8) All public improvements and required easements shall be extended through the parcel on which new development is proposed. Streets, waterlines, wastewater systems, drainage facilities, electric lines, and telecommunications lines shall be constructed through new development to promote the logical extension of public infrastructure. The Board of Trustees may require the applicant for a development to extend offsite improvements, provide easements to reach the development, and oversize required public facilities to serve anticipated future development as a condition of plat approval pursuant to Section 17-46(i).

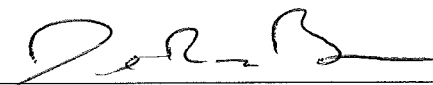
**Section 4.** Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any single part or multiple parts be declared unconstitutional or invalid.

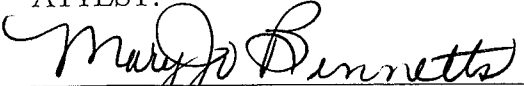
**Section 5.** Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED** this 9th day of June, 2015.

**THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY DAYS FROM PUBLICATION.**

TOWN OF BUENA VISTA, COLORADO

By:   
Mayor, Joel Benson

ATTEST:  
  
Town Clerk, Mary Jo Bennetts

