

Ordinance No 2024-09

AN ORDINANCE TO ESTABLISH FEES FOR THE MAINTENANCE AND OPERATION OF CERTAIN IMPROVEMENTS TO BE TRANSFERRED TO THE CITY OF HORSESHOE BEND

City of Horseshoe Bend

Horseshoe Bend, Arkansas

12/____/2024

WHEREAS, on December 3, 1980, the City Council of the City of Horseshoe Bend ("City") adopted Ordinance No. 80-06 that established a Municipal Recreational Facilities Improvement District for real property located within the corporate limits of the City of Horseshoe Bend, Arkansas known as the "Municipal Recreational Facilities Improvement District of the City of Horseshoe Bend, Arkansas (hereinafter referred to as the "District"); and

WHEREAS, through the enactment of Ordinance No. 80-01, the District acquired title to properties, including improvements, personal property and other assets thereon (hereinafter the "Improvements"), as set forth and described in Ordinance No. 80-06 and as acquired after; and

WHEREAS, from 1980 until present, the District has provided for the operation and maintenance of the Improvements through a levy of an annual installment against the assessments benefits in the District as provided for in Arkansas law, and

WHEREAS, October 6, 2020, a complaint styled *Graetz v. Municipal Recreational Facilities Improvement District No. 80-1 of the City of Horseshoe Bend; City of Horseshoe Bend* in Circuit Court of Izard County, Arkansas Case No. CV=20-81 (the "Lawsuit") was filed alleging an illegal extraction in that the levy of the annual installment against the assessment of benefits had been exhausted against the Plaintiff class; and

WHEREAS, on October 28, 2024, the court entered a Final Order Approving Class Settlement in the Lawsuit whereby the District is ordered to transfer the Improvements to the City upon the city's adoption of an ordinance to provide funding for the operation and maintenance of the Improvements; and

WHEREAS, considering that there was no other entity or option available to provide for the necessary upkeep, maintenance and operations of the Improvements and that the District would be no longer able to provide for such upkeep, maintenance and support, the City Council unanimously approved the settlement; and

WHEREAS, the Improvements include but are not limited to, lakes, dams, locks, embankments, drainage and stormwater structures necessary for storm water management throughout the City, large parcels of real property, a golf course, buildings and structures throughout the city that if not properly and regularly maintained and operated, will quickly deteriorate, become overgrown, and will be a danger to the public and to property and will be a determinant to the public health, safety and welfare of the people of the city; and

WHEREAS, the City Council finds that it is necessary for the public health, safety and welfare to provide for the operation and maintenance of the Improvements and that the failure to do so will endanger the public health, safety and welfare and shall be a danger to other real property in the city as well; and

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WHEREAS, the City Council finds that the operation and maintenance of the Improvements will constitute a substantial and specific new service for the citizens and property owners of the City for which the City does not have existing resources or manpower to maintain or operate and that the Improvements provide a unique benefit to each parcel of property in the city; and

WHEREAS, the City Council finds it to be in the best interests of citizens and property owners of the City to adopt a reasonable fee for each lot in the city in order for the city to be able to provide for the operation and maintenance of the Improvements and to protect the health, safety and welfare of the citizens, visitors and public in general and property in Horseshoe Bend.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the City Council of the City of Horseshoe Bend, as follows:

Section 1. There is hereby created by the City Council of the City of Horseshoe Bend a separate fund to for all revenues generated by the fee established herein and said revenues shall be deposited in this special fund ("Fund") and used exclusively for the maintenance, repair and operation of the Improvements by the City of Horseshoe Bend, as set forth herein, including but not limited to salaries, management, the purchase of equipment, construction costs, operations, materials, supplies or services for day-to-day maintenance, stormwater maintenance, land upkeep and other activities and costs related to the maintenance, operation and repair of the Improvements throughout the city. The monies in this Fund shall not be commingled with monies of any other city trust fund or account.

Section 2. The following revenues shall be deposited into the Fund:

- a. All revenues collected by and through this fee.
- b. All revenues resulting from the enforcement of this ordinance and the collection of this fee.

Section 3. An annual fee, set forth in the schedule attached hereto as Exhibit "A", is hereby adopted and each owner of real property within the municipal boundaries of the City of Horseshoe Bend shall be charged the annual fee as set forth in the attached exhibit. For all properties, the fee shall be collected through annual billing by the city payable by March 31 of each year. The property owner is responsible to maintain on file with the city a current and accurate address.

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Section 4. The City Administration is authorized by the City Council to set up a process for the assignment, billing and collection of the annual fee in accordance with this ordinance. No property owner who is past due or delinquent in the payment of this fee shall be permitted to apply for or receive access to city utilities, or be eligible to receive a permit of any kind from the city, until the fee and any late fee and penalties are paid in full. A commercial lot owner who is past due or delinquent in the payment of this fee shall not be permitted to be issues a business license by the city or apply for or receive access to city utilities, or be eligible to receive a permit of any kind from the city, until any late fee or penalty is paid in full. Any property owner who is aggrieved the fee for their property shall be permitted to make an objection to city administration and for that objection to be heard. Any determination by an official of the City Administration pursuant to the fee or the subject matter of this ordinance may be appealed to the City Council pursuant to Section 8 below.

Section 5. The City Council and City Administration shall review the fees each year in order to confirm that the fees are reasonably related and narrowly tailored to the public health, safety and welfare purposes set forth in this ordinance.

Section 6. Penalty Clause. In addition to the late fees and other remedies set forth in this ordinance and allowable by law, the penalty for violation of this ordinance shall, upon conviction in District Court, or any other court of competent jurisdiction, be up to maximum fines and penalties permitted by Ark. Code. Ann. § 14-55-504.

Section 7. Appeals. Any Determination made by an official of the City of Horseshoe Bend charged with the administration of any part of this ordinance may be appealed to the City Council by filing with the City Recorder within ten (10) days of the date of the determination being appealed: (1) a written notice of appeal on a form provided by the City, (2) a written explanation of why the appellant feels that a determination was in error, and (3) an appeal fee established by the City, if any. The City Council shall promptly fix a time and place for hearing the appeal, and the City Recorder shall mail notice of the hearing to the appellant at the address given in the notice of appeal by first-class mail postage prepaid. The hearing shall be conducted at the time and place stated in such notice given by the City Council. The determination of the City Council shall be final and any appeal of the final determination of the City Councel shall be made pursuant to the rules and procedures to appeal a final administrative determination by a municipal body.

Section 8. This ordinance supersedes and replaces any other Ordinances, or parts thereof, in conflict herewith.

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Section 9. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

PASSED AND APPROVED this ____ day of _____ 2024.

Approved:

Mayor Duane DeLair
Horseshoe Bend Arkansas

Attested:

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Exhibit A

Annual Fee Schedule for Real Property Lots

- \$40.00 per calendar year for each real property lot within the municipal limits of the City of Horseshoe Bend.

Commercial and Multifamily Uses shall be charged \$40.00 for each real property lot, but the fee will be capped at a total of \$1,000.00 per calendar year for any commercial business or enterprise use that includes multiple contiguous lots.

Example Calculation:

- If a business occupies **20 lots**, the total annual fee will be \$800.00.
- If a business occupies **30 lots**, the total annual fee will be **capped at \$1,000.00**, rather than \$1,200.00.