

ORDINANCE NO. _____

**AN ORDINANCE RELATING TO REIMBURSEMENT DISTRICTS
AND ADDING CHAPTER 13.30**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession;

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop, 20 Or. App. 293, 531 P 2d 730, 734 (1975);

WHEREAS, the City Council recognizes the City has a limited financial ability and resources to construct all appropriate infrastructure necessary for development of all private property throughout the City;

WHEREAS, the City Council recognizes the need to have an array of financing vehicles at the City's disposal to pay for capital costs associated with installing and constructing the various types of public infrastructure needed for the City's health and welfare and that of its residents;

WHEREAS, state law provides an array of financing devices to pay for public improvement and infrastructure including local improvement districts and system development charges;

WHEREAS, the City Council recognizes that Ashland, as an Oregon home rule municipality, has the plenary authority to develop, implement and use other types of financing devices or vehicles for public improvements than those provided for under state law;

WHEREAS, the City Council knows that public bodies, including the City, may construct or install public improvements of various types that would benefit privately owned properties that have, as of the date of the installation or construction of the particular public improvement, not yet been fully developed and as a result have no immediate use for the City's newly installed or constructed public improvement;

WHEREAS, the City Council recognizes that private property owners may, in the course of developing their respective properties, be either required by City Code or may independently choose to construct street, water, sewer or other improvements which have the potential to benefit other privately owned properties and thereby relieve the owners of those other properties of the requirement for installing or constructing those self-same improvements as their properties develop; and

WHEREAS, the City Council finds that a process or device should be created to allow for the imposition of a charge on property owners who benefit by and through the construction of such improvements, whether the improvements are constructed by the City or a private party, in order to allow for the equitable reimbursement thereof for capital and other costs associated with the construction of the beneficial improvements.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Sections 13.30.010 [Definitions] through 13.30.075 [Collection and Payment; Other Fees and Charges] are hereby added to read as follows:

13.30.010. Definitions

The following terms are definitions for the purposes of this Chapter (Chapter 13.30).

- A. **City Engineer** or **Engineer** means the person holding the position of Director of Public Works or such other officer, employee or agent designated by the Council or City Manager to perform the duties set out for the City Engineer in this Chapter.
- B. **City** means the City of Ashland.
- C. **Person** means a natural person, firm, partnership, corporation, association or any other legal entity, be it public or private and/or any agent, employee or representative thereof.
- D. **Applicant** means a person who is required or chooses to finance some or all of the cost of a street, water or sanitary sewer or storm water improvement, which improvement is also available to serve or benefit property other than that of the applicant, and who in turn applies to the City for reimbursement of the expense of the improvement.
- E. **Street Improvement, Water Improvement, Sewer Improvement and Storm Water Improvement** mean respectively:
 - 1. A street or street improvement, including but not limited to streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public rights-of-way;
 - 2. A water facility or water line improvement, including but not limited to, extending a water line to property (other than property owned by the applicant) so that water service can be provided for such other property without further extension of the line;
 - 3. A sanitary sewer, sewer line, or other facility improvement, including but not limited to extending a sewer line to property (other than property owned by the applicant) so that sewer service can be

provided for such other property without further extension of the line; and

4. A storm water improvement, including but not limited to extending a storm water line to property (other than property owned by the applicant) so that stormwater disposal for such other property can be provided without further extension of the line; conforming with standards and specifications set by the City.
- F. **Public Improvement** means (as appropriate) all capital facilities (including plant facilities) associated with water, sanitary sewer, storm water, street (including bicycle lanes), and/or sidewalk facilities or the undergrounding of public utilities.
- G. **Reimbursement Agreement** means the agreement between an Applicant and the City (as authorized by the City Council and executed by the City Manager) providing for the installation of and payment for public improvements within a Reimbursement District.
- H. **Reimbursement District** means the area determined by the City Council to derive a benefit from the construction of public improvements financed in whole or in part by an Applicant.
- I. **Reimbursement Fee** means the fee established by resolution of the City Council and required to be paid by persons within a Reimbursement District once they utilize the Public Improvement.
- J. **Utilize** means to use or benefit from a Public Improvement, to apply for a building or other permit which will allow for the use or increase in the use of a Public Improvement or to connect to a Public Improvement.

13.30.015. Application for a Reimbursement District

- A. Any Applicant who finances some or all of the cost of a Public Improvement available to provide service or benefit to property other than property owned by that person may, by written application filed with the City Engineer, request the City establish a Reimbursement District. The improvement(s) must be in a size greater than that which would otherwise ordinarily be required and must be available to provide service to property other than that owned by the applicant. Examples include (but are not limited to):
 1. Full street improvements instead of half street improvements;
 2. Off-site sidewalks;
 3. Connection of street sections for continuity;
 4. Extension of water lines; and
 5. Extension of sewer lines.
- B. All applications shall include the following:
 1. A description of the location, type, size and cost of the Public Improvement eligible for reimbursement;
 2. A map showing the properties to be included in a proposed reimbursement district;
 3. The zoning for the properties;

4. The front or square footage of said properties (or similar data appropriate for calculating the apportionment of the cost of the improvement among the properties); and
 5. A listing of the property(ies) owned by applicant.
All applications shall be accompanied by a fee in an amount sufficient to cover the cost of administrative review and notice required by this Chapter as established by City Council resolution.
- B. In the event an application is submitted after the construction of the Public Improvement, the application shall also include information as to when the City accepted the Public Improvement as well as the actual cost of the improvements, evidenced by receipts, invoices or other similar documents. Until receipt of said information, the affected application will be deemed incomplete.
 - C. In the event an application is submitted prior to the construction of the improvements, the application shall be accompanied by an estimate of the cost of the improvements as evidenced by bids, projections, or similar data. The application shall also include the estimated date of completion of the public improvement(s). Until the receipt of said information, the affected application will be deemed incomplete.
 - D. An application may be submitted at any time prior to the installation of the Public Improvement but in no event later than 180 days after acceptance of the improvement for which reimbursement is sought, unless the City Engineer, in his/her sole discretion waives this requirement.

13.30.020. City Engineer's Report

The City Engineer shall review the application and other material submitted therewith and prepare a written report for the Council which will address (to the extent relevant) the following factors:

- A. Whether the Public Improvement for which reimbursement is sought has capacity sufficient to allow use thereof by property other than property owned by the applicant;
- B. The area proposed to be included in the reimbursement district;
- C. The actual or estimated cost of the improvements within the area of the proposed Reimbursement District and the portion thereof for which the applicant should be reimbursed;
- D. A methodology for allocating the cost among the parcels within the proposed district and, where appropriate, defining a "unit" for applying the Reimbursement Fee to property which may be partitioned, subdivided or otherwise modified at some future date. The methodology should include consideration of the cost of the improvement(s), prior contributions by property owners, the value of the unused capacity, rate-making principles associated with the financing of public improvements, and such other factors as deemed relevant by the City Engineer;
- E. The amount to be charged by the City for administering the Agreement, to be fixed by City Council and included in the resolution approving and forming the Reimbursement District. The fee is due and payable to the City at the time the Reimbursement Agreement is signed;

- F. The period of time that the right to reimbursement exists if that period is less than ten (10) years; and
- G. Whether the street, water and sewer improvements will meet or have met City standards.

13.30.025. Amount to be Reimbursed

- A. The potential amount of the reimbursement is limited to the following:
 - 1. The costs of construction;
 - 2. Engineering (including surveying and inspection) costs in an amount not to exceed fifteen (15%) percent of the construction costs;
 - 3. Off-site right-of-way purchase costs, limited to the reasonable market value of land or easements purchased by the applicant from third parties to complete off-site improvements;
 - 4. Financing costs associated with the improvement to the extent the financing costs are not attributable to the applicant's property or project; and
 - 5. Legal and other expenses incurred by the applicant to the extent said expenses relate to the preparation and filing of the application, the preparation of the Report required by 13.30.020 and the hearing process set out in 13.30.030 and 13.30.035.
- B. Regardless of amount or category, costs reimbursable or eligible for traffic impact fee credits or systems development charge credits which cannot be clearly documented or which are attributable to the applicant's property or project are not reimbursable.
- C. By submitting an application that seeks reimbursement of legal expenses, the applicant thereby waives any attorney/client or attorney work product privilege that may exist in attorney billing statements or records in support thereof.
- D. A reimbursement fee shall be determined for all properties which fall within the proposed Reimbursement District, including applicant's; however, the applicant shall not be reimbursed for that portion of the fee representing the benefit to the applicant's property.
- E. The applicant shall not be reimbursed for the portion of the reimbursement fee computed for property owned by the City or other governmental body.

13.30.030. Public Hearing

- A. Within a reasonable time after the City Engineer has completed the report required in Section 3, the City Council shall hold an informational public hearing in which persons impacted by the creation of the Reimbursement District shall be given the opportunity to comment thereon.
- B. Notice of the hearing shall be given not less than 10 nor more than 30 days prior to the public hearing date. Notice shall be given to the applicant and all owners of property within the proposed District, with notification by certified mail, return receipt requested or by personal service. Notice shall be deemed complete as of the date notice is mailed or served; failure to receive actual notice of the hearing shall

not invalidate or otherwise affect any action of the City relative to the creation of the Reimbursement District and/or the costs associated therewith.

- C. Formation of a District does not result in an assessment or lien against property; as a result, the hearing is informational only and the District is not subject to termination as a result of remonstrances to the formation thereof. The City Council has the sole discretion, after the public hearing, to decide whether the District is to be formed or not. If a District is to be formed, a resolution approving and forming the reimbursement district shall be adopted.
- D. If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the City when the Council may modify the resolution to reflect the cost of the improvement(s).

13.30.035. City Council Action

At the conclusion of the hearing, the City Council shall approve, reject or modify the recommendations contained in the City Engineer's Report and manifest its action in a resolution. If a Reimbursement District is established, the resolution shall include a copy of the City Engineer's report as approved or modified and specify that payment of the appropriate fee as determined by the Council for each parcel is a precondition to receipt of any City permit necessary for development of that parcel. If a reimbursement district is established it shall be deemed formed as of the date the Council adopts the resolution referred to in Section 5 above.

13.30.040. Reimbursement Agreement

If the Council approves the City Engineer's Report and thereafter creates a District, the City Manager shall cause the creation of an Agreement between the Applicant and City containing (at a minimum) provisions relating to the following:

- A. That the public improvement(s) will or do meet all applicable City standards;
- B. The amount of the potential reimbursement the applicant can expect along with a caveat that the total amount of any reimbursement will not exceed the actual cost of the public improvement(s);
- C. The annual fee adjustment, if any;
- D. That the applicant will guarantee the quality of the public improvement(s) for a period of not less than twelve (12) months after the date of their installation;
- E. That the applicant will defend, indemnify and hold the City harmless from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the District; and
- F. That the applicant acknowledges the City is not obligated to collect the reimbursement fee from affected property owners.
- G. The City may include other provisions as the City Council determines necessary to ensure compliance with this Ordinance.

13.30.045. Annual Fee Adjustment

The City Council may, in its discretion, grant an annual adjustment to the amounts established as the Reimbursement Fee at the time of the hearing on the Engineer's Report. In the event such an adjustment is deemed appropriate, it shall be applicable to the fee beginning on the first anniversary of the date of the Council's approval of the application, be fixed and computed against the reimbursement fee as simple interest, and remain the same for each year the District exists.

13.30.050. Notice of Adoption of Resolution

The City shall notify all property owners within the District (as well as the Applicant) of the adoption of the Resolution manifesting creation of the District. The notice shall include a copy of the Resolution, the date of its adoption and a short explanation of when the property owner would be obligated to pay the reimbursement fee, the amount thereof as well as any if there will be any adjustments thereto.

13.30.055. Recording the Resolution

The City Recorder shall cause notice of the formation and nature of the Reimbursement District to be filed in the office of the Jackson County Recorder in order to provide notice to potential purchasers of property within the District of its existence. Failure to make such recording shall affect neither the legality of the resolution nor the obligation to pay any fee.

13.30.060. Contesting the Reimbursement District

Any legal action intended to contest the formation of the Reimbursement District or fee must be filed, within sixty (60) days of the Council's hearing on the application consistent with the terms of ORS 34.010 to 34.100 (Writ of Review).

13.30.065. Obligation to Pay Reimbursement Fee

- A. A person applying for a permit related to property within a Reimbursement District shall pay to the City, in addition to all other applicable fees and charges, the Reimbursement Fee established by the City Council under the terms of this Ordinance if, within the time specified in the Resolution establishing the District, the person applies for and receives approval from the City for any of the following activities:
1. A building permit for a new building or a permit for an addition, modification, repair or alteration to an existing building exceeding 25% of the value thereof within any 12-month period (not due to damage or destruction of the building by fire or natural disaster). "Value" as used above means the amount shown on the County's Department of Assessment and Taxation for the building's Real Market Value;

2. Any alteration, modification or change in the use of real property, which increases the number of parking spaces required under the Ashland Municipal Code in effect at the time of permit application;
 3. Connection to or use of a water, sanitary sewer, storm water or street improvement, if the district is based on that improvement.
- B. The obligation to pay the reimbursement fee arises and accrues as of the time property within the District utilizes the affected Public Improvement regardless of whether a person applies for and/or receives a permit connected with that utilization.
 - C. The City Council's determination of which properties shall be liable for payment of the fee is final. Neither the City nor any officer or employee of the City shall be liable for payment of any reimbursement fee or portion thereof as a result of this determination.
 - D. A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this ordinance is intended to modify or limit the authority of the City to provide or require access management.
 - E. No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement.
 - F. The right to reimbursement shall not extend beyond ten (10) years from the District's formation date, subject to renewal at the option of the Council for one additional ten (10) year period.

13.30.070. Public Improvements Become Property of the City

Public improvements installed pursuant to Reimbursement District agreements shall become and remain the sole property of the City. More than one public improvement may be the subject of a Reimbursement District.

13.30.075. Collection and Payment; Other Fees and Charges

- A. Applicants shall receive all reimbursement monies collected by the City for the public improvements they install. Such reimbursement shall be delivered to the developer for as long as the Reimbursement District agreement is in effect. Such payments shall be made by the City within 90 days of receipt of the reimbursements monies.
- B. The reimbursement fee is not intended to replace or limit any other existing fees or charges collected by the City.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or

another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-3) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2010, and duly PASSED and ADOPTED this ____ day of _____, 2010.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2010.

John Stromberg, Mayor

Reviewed as to form:

Megan Thornton, Interim City Attorney