

ORDINANCE NO. 749**AN ORDINANCE CREATING A REIMBURSEMENT DISTRICT POLICY FOR THE CITY OF MADRAS, OREGON, AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Madras, due to the current rate of growth, is finding it difficult to provide needed infrastructure for new development within the city limits of Madras; and

WHEREAS, in an effort to help provide the needed infrastructure, the City of Madras is developing a "Reimbursement District Policy" for individuals who construct public improvements capable of providing services to property, other than property owned by that person; and

WHEREAS, the City Council, after reviewing the proposed "Reimbursement District Policy" language prior to the January 24, 2006 City Council meeting, agreed with staff's recommendation of the need for the policy.

NOW, THEREFORE, the City of Madras ordains as follows:

SECTION 1: DEFINITIONS

Applicant. A person who is required to pay for or install (or chooses to finance) some or all of a public improvement which is available to serve real property (other than real property owned by the person) and who applied to the City for reimbursement for the expense of the improvement. An applicant can be the City.

City. The City of Madras.

City Administrator. The person holding the position of City Administrator or any officer or employee designated by that person to perform the duties set out in this Ordinance.

Front Footage. The linear footage of a lot or parcel owned by a property owner to be served by a public improvement. Front footage excludes the front footage of property used as public right-of-way.

Person. A natural person, a partnership, corporation, association or any other legal entity, capable of owning, holding and/or disposing of real or personal property.

Public Improvement. The construction, reconstruction and/or upgrading of facilities covered by the terms of "street improvement", "sewer improvement" and/or "water improvement" as defined in this Section.

Reimbursement Agreement. The agreement between an applicant and the City providing for the construction, reconstruction and/or upgrading of and payment for public improvements to be financed through a reimbursement district.

Reimbursement District. The area determined by the Madras City Council to derive benefits from the construction of street, water and/or sewer improvements, financed in whole or in part by an applicant including property having the potential to utilize the affected improvement(s).

Reimbursement Fee. That sum determined by a resolution of the City Council and the reimbursement agreement to be the amount of money proportionate to the benefit derived by the affected property from the public improvement.

Sewer Improvement. A sewer or sewer line improvement conforming to the City of Madras adopted standards and specifications, and any applicable land use conditions of approval 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.

Street Improvement. Street improvement conforming to the City of Madras adopted standards and specifications, and any applicable land use conditions of approval including, but not limited to, streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public right-of-way.

Water Improvement. A water or water line improvement conforming to the City of Madras adopted standards and specifications, and any applicable land use conditions of approval including, but not limited to, extending a water line to real property (other than property owned by the applicant) so that water service can be provided for said other property without extension of the line.

Utilize. To receive the benefit of a public improvement, manifested by the receipt of a permit which will allow the use of an affected public improvement, or increase the use thereof.

SECTION 2: APPLICATION FOR A REIMBURSEMENT DISTRICT

1. Any person who constructs public improvement(s) capable of providing service(s) to property, other than property owned by that person, may, by written application filed with the City, request that the City establish a reimbursement district. The application shall be accompanied by a fee sufficient to cover the cost of administrative review and the notice required by this Ordinance.
2. The application for creation of a reimbursement district shall include the following:

- A. A description of the location, type, size and cost of the public improvement sought to be eligible;
- B. A map showing the properties to be included within the proposed reimbursement district which includes information on the ownership of each property; the zoning thereof; the front and/or square footage of the property; and any other data (traffic studies, water modeling, etc.) necessary for or relevant to calculating the apportionment of the cost of the affected public improvement(s).
- C. Information on the cost of the public improvement(s). In the event the affected public improvement(s) have been built or installed, this information must reflect the actual cost of the improvements as evidenced by receipts, invoices or other similar documents. In the event the public improvements have not been constructed or installed, the information must reflect the estimated cost of the improvements as evidenced by bids, projections as to the cost of labor and materials and other similar information requested by the City Administrator.
- D. The date the City either accepted the public improvements or estimated date of completion.

An application may be submitted to the City prior to the construction or installation of the attached public improvement but in any event must be submitted not later than ninety (90) days after completion and acceptance by the City of the public improvements. However, the City Administrator may waive this time limitation upon a showing by the applicant of good cause for the delay.

SECTION 3: CITY ADMINISTRATOR'S REPORT

The City Administrator shall review the application and evaluate whether a Reimbursement District should be established. The City Administrator may require the submittal of other relevant information from the applicant in order to assist the City Administrator in the evaluation. The City Administrator shall after evaluation, prepare a written report for the City Council, considering and making a recommendation as to the efficacy of establishing a reimbursement district. The report shall include information on the following items:

1. Whether the applicant will finance or has constructed some or all of the public improvement(s) and whether those improvements are available to serve property other than property owned by the applicant;

2. The area to be included within the reimbursement district;
3. The actual or estimated cost of the public improvement(s);
4. A methodology for spreading the cost associated with the public improvement(s) between and among the affected parcels. The methodology should take into consideration the cost of the improvement(s), the value of the unused capacity, and such other factors as may be deemed relevant by the City Administrator, utilizing cost accounting principles generally employed in the construction of public improvements;
5. The amount, if any, to be charged by the City for its administration of the agreement;
6. The period of time that the right to reimbursement exists; and
7. Whether the public improvement(s) will or have met City standards.
8. The obligation of the applicant to otherwise make these improvements under other relevant authority of the City, including but not limited to the City's Transportation System Plan, Subdivision and Partition Ordinance and other development standards and conditions of the City. This obligation also includes what are generally referred to as "off-site" improvements required as a condition of development; notwithstanding the availability of a Reimbursement District.

SECTION 4: AMOUNT TO BE REIMBURSED

The cost to be reimbursed to the applicant is limited to the cost of construction, including property acquisition costs, the cost of construction permits, engineering and legal expenses related directly to the formation of the Reimbursement District, as determined by the City Council in its sole discretion.

SECTION 5: PUBLIC HEARING

1. Within a reasonable time after the City Administrator has completed the report described in Section 3, the City Council shall hold a public hearing at which any person that is or may be monetarily affected by the formation of the reimbursement district is given the opportunity to comment on the formation of the proposed reimbursement district. The formation of the reimbursement district is not subject to termination because of remonstrances, and the City Council has the sole authority and discretion to decide whether a reimbursement district shall be formed.

2. If a reimbursement district is formed prior to the actual construction of and/or acceptance by the City of the improvement(s), the City Council may set a not-to-exceed reimbursable amount which may or may not reflect the applicant's actual costs. A second public hearing shall be held after the improvement(s) have been accepted by the City. At that time, the City Council may modify the resolution described in Section 7 to reflect the actual cost of the improvement(s).

SECTION 6: NOTICE OF PUBLIC HEARING

Not less than ten (10) nor more than thirty (30) days prior to any public hearing held pursuant to this Ordinance, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof.

Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than thirteen (13) days prior to the hearing, which notice is deemed effective on the date the notice is mailed. Failure of the applicant or any affected property owner to receive notice shall not invalidate or otherwise affect the authority of the City Council to act.

SECTION 7: CITY COUNCIL ACTION

1. After the public hearing held pursuant to Section 5, the City Council shall approve, reject or modify the recommendations contained in the City Administrator's report. The Council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the City Administrator's report as approved or modified, and shall specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving City permits applicable to development of that parcel as provided for in Section 11.
2. When the applicant is other than the City, the resolution shall authorize the City Administrator to enter into an agreement with the applicant pertaining to the reimbursement district improvements. The agreement, at a minimum, shall contain the following provisions:
 - A. That the public improvement(s) shall meet all applicable City standards;
 - B. The amount of potential reimbursement to the applicant;
 - C. That the total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s);

- D. That the applicant shall guarantee the public improvement(s) for a minimum period of twelve (12) months after the date of written acceptance by the City;
 - E. That the applicant shall 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 City will make reasonable efforts to properly account for and collect the reimbursement fee from any affected property, including the City's costs or expenses related to collection of the reimbursement fee, but is not liable for any failure to collect such fee or costs.
 - G. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the City.
3. If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

SECTION 8: NOTICE OF ADOPTION OF RESOLUTION

The City shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution, by notice mailed to them. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount thereof.

SECTION 9: 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 County Clerk so as to provide notice to potential purchasers of property within the District. Said recording shall not create a lien. Failure to make such recording shall not affect either the lawfulness of the resolution nor the obligation to pay the reimbursement fee.

SECTION 10: CONTESTING THE REIMBURSEMENT DISTRICT

Any legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed

within sixty (60) days following the adoption of a resolution establishing a reimbursement district, and shall be by Writ of Review as provided in ORS 34.010 to ORS 34.100.

SECTION 11: OBLIGATION TO PAY REIMBURSEMENT FEE

1. The applicant for a permit related to property within any reimbursement district shall pay to the City, in addition to any other applicable fees and charges, the reimbursement fee established by the City Council if within the time specified in the resolution, the person applies for and receives approval for any of the following activities:
 - A. A building permit which will cause either the use of a public improvement or an increase in the use thereof;
 - B. The connection to a public improvement which results in the use of a public improvement, or an increase in the use thereof.
 - C. Any City approval or development activity which results in utilization of a public improvement as defined in Section 1 of this Ordinance.
2. The City's determination of who shall pay the reimbursement fee is final. Neither the City nor any officer or employee shall incur liability of any nature whatsoever as a result of this determination.
3. A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvement(s), regardless of whether access is taken or provided directly onto such street. Nothing in this Section is intended to modify or limit the authority of the City to provide or require access management.
4. 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 other improvement(s). No permit shall be issued for any of the activities listed in subsection 1 of this section unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. In the case of multiple improvements, a reimbursement fee may be collected for selected improvements which the new development actually utilizes.
5. The date when the right of reimbursement ends shall be as follows:

- A. For sewer and water improvements, twenty (20) years from the district formation date.

[Amended by Ordinance No. 757, Passed March 28, 2006]

- B. For street improvements, twenty (20) years from the district formation date. The reimbursement fee shall be calculated at its full original value as determined by the process herein described. No extensions may be applied for or authorized in the case of street improvements.

[Amended by Ordinance No. 757, Passed March 28, 2006]

6. Any property owner may prepay the established reimbursement fee prior to applying for a building permit or connecting to the affected public improvement.

SECTION 12: PUBLIC IMPROVEMENTS

Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the City, or other appropriate public entity as directed by the City.

SECTION 13: MULTIPLE PUBLIC IMPROVEMENTS

During the initial formation of a reimbursement district, more than one public improvement may be considered for inclusion in the reimbursement district.

SECTION 14: COLLECTION AND PAYMENT; OTHER FEES AND CHARGES

1. Applicants shall receive all reimbursement collected by the City for their public improvements. 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 ninety (90) days of receipt of the reimbursements.
2. The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the City.

SECTION 15: EMERGENCY CLAUSE

The City Council of the City of Madras, having reviewed the Comprehensive Plan of the City of Madras, and the need for enactment of ordinances to regulate land use within the City does hereby determine that this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Madras and an emergency is hereby declared to exist, and this Ordinance shall become in full force and effect from and after the date it is enacted and signed by the Mayor.

PASSED by the Council and signed by the Mayor February 14, 2006.