



## ORDINANCE 2014-011

### AMENDING SECTION 13.24 OF THE SHERWOOD MUNICIPAL CODE TO AUTHORIZE EXTENDING THE DURATION OF A REIMBURSEMENT DISTRICT

**WHEREAS**, Section 13.24 of the Municipal Code authorizes the City Council to approve a reimbursement district and sets a ten (10) year time limit on the duration of the district; and

**WHEREAS**, the Municipal Code currently does not authorize extending the reimbursement period, and

**WHEREAS**, a reimbursement district was formed in 2008 prior to the economic downturn; and

**WHEREAS**, as a result of the economic downturn, development has been slow resulting in significantly less funds contributed to the reimbursement district than anticipated; and

**WHEREAS**, the Sherwood School District, which financed the improvements included in the reimbursement district, has requested the City consider amending the Municipal Code to authorize extending the duration of the reimbursement district; and

**WHEREAS**, the City Council recognizes the significance of the economic circumstances and has previously amended the Municipal Code to allow additional extensions for other development projects; and

**WHEREAS**, the City Council intends that the School District and any future developer for whom a reimbursement district is formed must clearly demonstrate that an extension is warranted and that the improvement still provides adequate value for the subject properties, and

**WHEREAS**, the proposed amendments ensure that the City Council can evaluate whether the circumstance warrants an extension.

### **NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:**

**Section 1.** The Sherwood Municipal Code, Section 13.24, is amended to allow for an extension of up to five (5) additional years as set forth in the attached Exhibit A.

**Section 2.** This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

**Duly passed by the City Council this 3rd day of June 2014.**

  
\_\_\_\_\_  
Bill Middleton, Mayor

Attest:

  
Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	<u>✓</u>	_____
Langer	<u>✓</u>	_____
Butterfield	<u>✓</u>	_____
Folsom	<u>✓</u>	_____
Grant	<u>✓</u>	_____
Henderson	<u>✓</u>	_____
Middleton	<u>✓</u>	_____

## Chapter 13.24 PUBLIC IMPROVEMENT REIMBURSEMENT DISTRICTS

### 13.24.010 Definitions.

The following terms are defined as follows for the purposes of this chapter:

"City" means the City of Sherwood, Oregon.

"Developer" means a person who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement.

"Development permit" means any final land use decision, limited land use decision, expedited land division decision, partition, subdivision, planned unit development, or driveway permit.

"Person" means a natural person, the person's heirs, executors, administrators or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent, employee or representative thereof.

"Public improvement" means any construction, reconstruction or upgrading of public water, stormwater, sanitary sewer or street improvements.

"Public works director" means the director of the department responsible for the review and approval of Private Development projects~~public-works-director-of in~~ the city of Sherwood.

"Reimbursement agreement" means the agreement between the developer and the city which is authorized by the city council and executed by the city manager, providing for the installation of and payment for reimbursement district public improvements.

"Reimbursement district" means the area which is determined by the city council to derive a benefit from the construction of public improvements, financed in whole or in part by the developer.

"Reimbursement fee" means the fee required to be paid by a resolution of the city council and the reimbursement agreement. The city council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the developer for financing the construction of the improvement within the reimbursement district.

*(Ord. 01-1114 § 1)*

### 13.24.020 Application to establish a reimbursement district.

- A. A person who is required to or chooses to finance some or all of the cost of a public improvement which will be available to provide service to property other than property owned by the person

may by written application filed with the public works director request that the city establish a reimbursement district. The public improvement must be of a size greater than that which would otherwise ordinarily be required in connection with an application for a building permit or development permit or must be available to provide service to property other than property owned by the developer, so that the public will benefit by making the improvement.

- B. The application shall be accompanied by an application fee, as set by council resolution which is reasonably calculated to cover the cost of the preparation of the public works director's report and notice pursuant to this chapter.
- C. The application shall include the following:
  - 1. A written description of the location, type, size and cost of each public improvement which is to be eligible for reimbursement.
  - 2. A map showing the boundaries of the proposed reimbursement district, the tax account number of each property, its size and boundaries.
  - 3. A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage and square footage of said properties, or similar data necessary for calculating the apportionment of the cost; the property or properties owned by the developer; and the names and mailing addresses of owners of other properties to be included in the proposed reimbursement district.
  - 4. The actual or estimated cost of the public improvements.
- D. The application may be submitted to the city prior to the installation of the public improvement but not later than one hundred eighty (180) days after completion and acceptance of the public improvements by the city. This time period may be extended by the city manager for good cause shown.

*(Ord. 01-1114 § 3)*

### **13.24.030 Public works director's report.**

The public works director shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The public works director may require the submission of other relevant information from the developer in order to assist in the evaluation. The public works director shall prepare a written report for the city council that considers and makes a recommendation concerning each of the following factors:

- A. Whether the developer will finance, or has financed some or all of the cost of the public improvement, thereby making service available to property, other than that owned by the developer.
- B. The boundary and size of the reimbursement district.
- C. The actual or estimated cost of the public improvement serving the area of the proposed reimbursement district and the portion of the cost for which the developer should be reimbursed for each public improvement.
- D. A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which

may, with city approval, be partitioned, subdivided, altered or modified at some future date. City may use any methodology for apportioning costs on properties specially benefited that is just and reasonable.

- E. The amount to be charged by the city for an administration fee for the reimbursement agreement. The administration fee shall be fixed by the city council and will be included in the resolution approving and forming the reimbursement district. The administration fee may be a percentage of the total reimbursement fee expressed as an interest figure, or may be a flat fee per unit to be deducted from the total reimbursement fee.
- F. Whether the public improvements will or have met city standards.
- G. Whether it is fair and in the public interest to create a reimbursement district.

(Ord. 01-1114 § 3)

#### **13.24.040 Amount to be reimbursed.**

- A. A reimbursement fee shall be computed by the city for all properties within the reimbursement district, excluding property owned by or dedicated to the city or the state of Oregon, which have the opportunity to use the public improvements, including the property of the developer, for formation of a reimbursement district. The fee shall be calculated separately for each public improvement. The developer for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for its own property.
- B. The cost to be reimbursed to the developer shall be limited to the cost of construction engineering, construction, and off-site dedication of right of way. Construction engineering shall include surveying and inspection costs and shall not exceed seven and a half (7.5) percent of eligible public improvement construction cost. Costs to be reimbursed for right of way shall be limited to the reasonable market value of land or easements purchased by the developer from a third party in order to complete off-site improvements.
- C. No reimbursement shall be allowed for the cost of legal expenses, design engineering, financing costs, permits or fees required for construction permits, land or easements dedicated by the developer, the portion of costs which are eligible for systems development charge credits or any costs which cannot be clearly documented.
- D. Reimbursement for the amount of the application fee required by Section 13.24.020 in this chapter.

(Ord. 01-1114 § 4)

#### **13.24.050 Public hearing.**

- A. Within forty-five (45) days after the public works director has completed the report required in Section 13.24.030, the city council shall hold an ~~informational~~ public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Developer shall provide the mailing list for all property owners within the proposed district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The city council has the sole discretion after

the public hearing to decide whether to adopt a resolution approving and forming the reimbursement district ~~shall be adopted~~.

- B. Not less than ten (10) days prior to any public hearing held pursuant to this chapter, the developer and all owners of property within the proposed district shall be notified of the public hearing and the purpose thereof. Such notification shall be accomplished by either regular and certified mail or by personal service. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the developer or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the city council's action to approve the same.

*(Ord. 01-1114 § 5)*

### **13.24.060 City council action.**

- A. After the public hearing held pursuant to Section 13.24.050A, the city council shall approve, reject or modify the recommendations contained in the public works director's report. The city council's decision shall be contained in a resolution. If a reimbursement district is established, the resolution shall include the public works director's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving any city permits applicable to development of that parcel as provided for in Section 13.24.100.
- B. The resolution shall establish an interest rate to be applied to the reimbursement fee as a return on the investment of the developer. The interest rate shall be fixed and computed against the reimbursement fee as simple interest and will not compound.
- C. The resolution shall instruct the city manager to enter into an agreement with the developer pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement shall contain at least the following provisions:
  - 1. The public improvement(s) shall meet all applicable city standards.
  - 2. The total amount of potential reimbursement to the developer shall be specified.
  - 3. The total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s).
  - 4. The developer shall guarantee the public improvement(s) for a period of twelve (12) months after the date of installation.
  - 5. A clause in a form acceptable to the city attorney stating that the developer shall defend, indemnify and hold harmless the city 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 reimbursement district, including any city costs, expenses and attorney fees related to collection of the reimbursement fee should the city council decide to pursue collection of an unpaid reimbursement fee under Section 13.24.110H.
  - 6. A clause in a form acceptable to the city attorney stating that the developer agrees that the city, cannot be held liable for any of the developer's alleged damages, including all costs and attorney fees, under the agreement or as a result of any aspect of the formation of the

reimbursement district, or the reimbursement district process, and that the developer waives, and is stopped from bringing, any claim, of any kind, including a claim in inverse condemnation, because the developer has benefited by the city's approval of its development and the required improvements.

7. Other provisions the city determines necessary and proper to carry out the provisions of this chapter.

**GD.** 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.

*(Ord. 01-1114 § 6)*

#### **13.24.070 Notice of adoption of resolution.**

The city shall notify all property owners within the district and the developer of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation specifying the amount of the reimbursement fee and that the property owner is legally obligated to pay the fee pursuant to this chapter.

*(Ord. 01-1114 § 7)*

#### **13.24.080 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 Washington 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 the legality of the resolution or the obligation to pay the reimbursement fee.

*(Ord. 01-1114 § 8)*

#### **13.24.090 Contesting the reimbursement district.**

No 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 after sixty (60) days following the adoption of a resolution establishing a reimbursement district and any such legal action shall be exclusively by Writ of Review pursuant to ORS 34.0 10 to ORS 34.102.

*(Ord. 01-1114 § 9)*

#### **13.24.100 Obligation to pay reimbursement fee.**

- A. The applicant for a permit related to property within any reimbursement district shall pay the city, in addition to any other applicable fees and charges, the reimbursement fee established by the council, if within ten years after the date of the passage of the resolution forming the reimbursement 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;
  2. Building permits for any addition(s) of a building, which cumulatively exceed twenty-five (25) percent of the existing square footage in any thirty-six (36) month period;

3. A development permit, as that term is defined by this chapter;
  4. A city permit issued for connection to a public improvement.
- B. The city's determination of who shall pay the reimbursement fee and when the reimbursement fee is due is final.
  - C. In no instance shall the city, or any officer or employee of the city, be liable for payment of any reimbursement fee, or portion thereof, as a result of the city's determination as to who should pay the reimbursement fee. Only those payments which the city has received from or on behalf of those properties within a reimbursement district shall be payable to the developer. The city's general fund or other revenue sources shall not be liable for or subject to payment of outstanding and unpaid reimbursement fees imposed upon private property.
  - D. Nothing in this chapter is intended to modify or limit the authority of the city to provide or require access management.
  - E. Nothing in this chapter is intended to modify or limit the authority of the city to enforce development conditions which have already been imposed against specific properties.
  - F. Nothing in this chapter is intended to modify or limit the authority of the city, in the future, to impose development conditions against specific properties as they develop.
  - G. 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. No permit shall be issued for any of the activities listed in subsection 10A unless the reimbursement fee, together with the amount of accrued interest, has been paid in full. Where approval is given as specified in subsection 10A, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.
  - H. The date of reimbursement under this chapter shall extend ten (10) years from the date of the formation of a reimbursement district formation by city council resolution. The developer may file with the City a written application to extend the reimbursement district for up to five (5) additional years. The application shall provide information regarding the remaining useful life of the improvement(s), the continuing benefit to subject properties, and explain why there is good cause for the extension. In considering an application for an extension, the Council must provide notice in accordance with 13.24.050.B and hold a public hearing for anyone to provide comment. After the public hearing the Council may, by resolution, approve the extension for up to five (5) additional years after determining that the developer has demonstrated good cause for the extension and that the value of the improvement(s) to the subject properties remains sufficient to warrant reimbursement. If an extension is approved by the City Council, the City Recorder shall provide notice in accordance with 13.24.070 and record the resolution in accordance with 13.24.080.
  - I. The reimbursement fee is immediately due and payable to the city by property owners upon use of a public improvement as provided by this chapter in subsection 10A. If connection is made or construction commenced without required city permits, then the reimbursement fee is immediately due and payable upon the earliest date that any such permit was required.
  - J. Whenever the full reimbursement fee has not been paid and collected for any reason after it is due, the city manager shall report to the city council the amount of the uncollected



reimbursement, the legal description of the property on which the reimbursement is due, the date upon which the reimbursement was due and the property owner's name or names. The city council shall then, by motion, set a public hearing date and direct the city manager to give notice of that hearing to each of the identified property owners, together with a copy of the city manager's report concerning the unpaid reimbursement fee. Such notice may be either by certified mail or personal service. At the public hearing, the city council may accept, reject or modify the city manager's report. If the city council determines that the reimbursement fee is due but has not been paid for whatever reason, the city council may, at its sole discretion, act, by resolution, to take any action, it deems appropriate, including all legal or equitable means necessary to collect the unpaid amount. However, nothing in this chapter requires the city to take any action to collect such amounts.

*(Ord. 01-1114 § 10)*

#### **13.24.110 Public improvements.**

Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the city.

*(Ord. 01-1114 § 11)*

#### **13.24.120 Multiple public improvements.**

More than one public improvement may be the subject of a reimbursement district.

*(Ord. 01-1114 § 12)*

#### **13.24.130 Collection and payment—Other fees and charges.**

- A. The developer shall receive all reimbursement collected by the city for reimbursement district 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.
- B. 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.

*(Ord. 01-1114 § 13)*

#### **13.24.140 Nature of the fees.**

The city council finds that the fees imposed by this chapter are not taxes subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

*(Ord. 01-1114 § 14)*

#### **13.24.150 Severability.**

If any section, phrase, clause, or part of this chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.