

ORDINANCE NO. 1849

(An ordinance adding Chapter 13.17—Reimbursement Districts and amending Section 3.20.090—Adequate Public Facilities and Contribution—Application of Funds of the Hood River Municipal Code)

WHEREAS, the City of Hood River experiences significant and continued growth and development which places burdens on existing public improvements and which requires the installation of certain public improvements that may specially benefit more than just the property being developed;

WHEREAS, the City recognizes the burden and inequities that may result from requiring developers to carry the entire financial burden; and

WHEREAS, the City desires to provide a means whereby development costs may be mitigated by distributing those costs to other specially benefited property owners at the time they connect to or make use of the public improvement;

WHEREAS, the City currently provides for the recapture of construction costs for public improvements when constructed and paid for by the City pursuant to Chapter 13.16, but does not provide for the recapture of those costs when a person other than the City constructs improvements that specially benefit off-site property owners, or when the improvement is not constructed pursuant to Chapter 13.16 for whatever reason.

WHEREAS, the purpose of this ordinance is to create a means by which development costs are mitigated by distributing those costs to other specially benefited property owners at the time they connect to or make use of the public improvement.

WHEREAS, the reimbursement charges established under this ordinance represent a cost associated with development, which is specially related to the impact created by new development and the costs of accommodating that impact.

WHEREAS, the reimbursement charges established under this ordinance are not an assessment against the property and in fact do not become due and payable unless and until the subject property is connected to or makes use of the improvement. These charges are fees for services because they contemplate a development's receipt of essential municipal services based upon the nature of that development. The timing and extent of development are within the control and discretion of the developer. Furthermore, the charges are not intended to be a tax on property or the property owner as a direct consequence of ownership of property

within the meaning of the Oregon Constitution.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 13.17 is added to the Hood River Municipal Code:

CHAPTER 13.17 – REIMBURSEMENT DISTRICTS

Sections:

- 13.17.010 Definitions
- 13.17.020 Initiation of Proceedings
- 13.17.030 City Engineer’s Report
- 13.17.040 Public Hearing
- 13.17.050 Determining Reasonable Actual Costs
- 13.17.060 Obligation to Pay Reimbursement Charge
- 13.17.070 Right of Reimbursement
- 13.17.080 Ownership of Public Improvement
- 13.17.090 Prohibited Conduct
- 13.17.100 Unpaid Reimbursement Charges

13.17.010 Definitions.

“Council” means the City Council for the City of Hood River.

“Public Improvement” means a sewer or sewer line improvement, a street or street improvement, a surface water quality or quantity facility, and a water or water line improvement, or any other public improvement authorized and so designated by the Council, any and all of which conform to City standards.

“Person” means an individual or any legal entity, including the City of Hood River.

“Reimbursement Charge” means the charge imposed pursuant to this Chapter designed to reimburse a person for the costs of financing a public improvement. The Reimbursement Charge is not intended to limit or replace, and is in addition to, any other existing fees or charges collected by the City.

“Reimbursement District” means the area benefited by the construction of the public improvement financed in whole or in part by a person without the formation of a local improvement district. A Reimbursement District may be formed in conjunction with a local improvement district where a person finances a share of the costs of the improvement that is

larger than the share that would result from a uniform application of the local improvement district assessment formula to property located in the local improvement district and owned by the person.

“Special benefit” or “specially benefit” mean the value associated with a capital improvement that relates to a particular property to the extent that the property is, or may be, partially relieved of a cost or expense associated with development or construction of the improvement, and which is different in degree from the value or benefit received by the general public.

13.17.020 Initiation of Proceedings.

A. Any person may apply to the City to form a Reimbursement District where the person chooses or is required as a condition of permit approval to construct a public improvement that includes additional or oversized improvements that would or could specially benefit property other than property owned by the applicant. Examples include, but are not limited to, full street improvements instead of half-street improvements, off-site sidewalks or pathways, off-site traffic signals, connection or extension of street sections for continuity, and extension or oversizing of water, sewer, or storm water management lines. More than one public improvement may be the subject of a Reimbursement District.

B. The application shall be in writing and shall be accompanied by a nonrefundable processing fee set by Council resolution sufficient to cover the administrative and notice costs of processing the application pursuant to this Chapter. If the City is the applicant, the fee shall be waived. The application shall include the following:

1. A description of the location, type, and size of the public improvement, including detailed or as-built plans or drawings showing the location, nature and extent of the public improvement.
2. A narrative explaining why the applicant believes all or part of the cost of the improvement is eligible for reimbursement pursuant to this Chapter.
3. A map showing the properties to be included in the proposed district, including the City zoning designation, tax lot numbers, owners of the properties, according to the current records of the County Assessor’s office and their mailing addresses, the square footage or frontage of the properties, and identification of the properties owned by the applicant, if any.
4. Detailed costs of the public improvements to be reimbursed. If the

application is filed after construction, the application shall include the actual costs of construction as evidenced by a contract, receipts, bids or other similar documents. If the application is filed prior to construction, the application shall include the estimated costs of the improvements as evidenced by bids, cost and labor projections, or other similar evidence satisfactory to the City Engineer.

5. A proposed methodology for spreading the cost among the properties within the Reimbursement District and, where appropriate, defining a “unit” for applying the Reimbursement Charge to property that may, subject to City approval, be partitioned, adjusted or subdivided at a future date.

6. The date that the City accepted the public improvements or the date on which they are estimated to be complete.

7. A signed Construction Agreement on a form provided by the City.

8. Any other relevant information required by the City Engineer.

C. The application to form a Reimbursement District shall be made no later than 180 days after completion and written acceptance by the City of the public improvement.

13.17.030 City Engineer’s Report. Upon receipt of a complete Reimbursement District application, as determined by the City Engineer, the City Engineer shall review the request for the establishment of a Reimbursement District and prepare a report containing the City Engineer’s recommendation to be submitted to the Council within 30 days after receipt of the complete application. The report shall include the following information:

1. An explanation as to why the applicant is or is not qualified for reimbursement pursuant to this Chapter;

2. A description of the proposed area for the Reimbursement District. The description shall indicate whether properties located in the Urban Growth Area should be considered for inclusion in the Reimbursement District upon annexation.

3. An estimate of the actual total costs of the public improvement and the portion of the cost for which the applicant should be reimbursed in accordance with this Chapter.

4. The extent to which the improvement have or will relieve other property owners or developers of the need to construct some or all of the improvement and whether or not the properties within the proposed Reimbursement District would be required, as a condition of approval for future development, to construct some or all of the improvement.

5. A methodology for spreading the cost among the properties within the Reimbursement District and, where appropriate, defining a “unit” for applying the Reimbursement Charge to property that may, subject to City approval, be partitioned, adjusted or subdivided at a future date. The methodology should consider the cost of the improvements, prior contributions of property owners (only if for the same type of improvement at the same location), the value of the unused capacity, rate making principles employed to finance public improvements, and other relevant factors.

6. A proposed Reimbursement Charge for the District.

13.17.040 Public Hearing.

A. The Council shall schedule a public hearing within a reasonable time following receipt of the City Engineer’s report at which the Council shall consider the application, the City Engineer’s report and any testimony or evidence presented concerning the proposed Reimbursement District. The hearing shall be for informational purposes and any person may present testimony generally and ask questions regarding the proposed Reimbursement District. The Mayor may impose reasonable time limits on testimony.

B. The City Recorder shall cause notice of the public hearing to be mailed by regular mail at least 14 days prior to the date set for the hearing to the applicant and to all property owners within the proposed Reimbursement District as shown on the most recent assessment roll in the possession of the County Assessor’s office. Notice shall be deemed effective on the date of mailing. Failure to receive notice by the applicant or any affected property owner shall not invalidate or otherwise affect the formation of the Reimbursement District. The notice shall:

1. State that a Reimbursement District has been proposed that includes the property of the person receiving the notice;

2. Briefly describe the Reimbursement District, the type of public improvement to be reimbursed, the amount of the Reimbursement Charge, and the circumstances under which the charge must be paid;

3. Include a copy of the City Engineer’s report;

4. State that any person may appear and be heard;

5. State the date, time and location of the hearing.

C. Following close of public testimony, the Council may request comments from

staff and may direct questions to staff regarding the proposed Reimbursement District. The Council may, in its sole discretion, approve, reject or modify the proposed Reimbursement District as set forth in the City Engineer's report. The final decision shall be made upon adoption of a formal written resolution. A resolution approving formation of a Reimbursement District shall incorporate the City Engineer's report including modifications, if any, and shall address the following:

1. Whether the properties against which the Reimbursement Charge is proposed to be established are or will be specially benefited by the public improvement.
2. Whether the costs for which the Reimbursement Charge is sought are based upon improvement construction contract documents or other appropriate information provided by the applicant and the extent to which the costs exceed prevailing market rates for similar projects.
3. Whether the method of apportionment is reasonably calculated to reflect the special benefits each property received from the improvement.
4. Whether the annual percentage rate multiplier to be applied to the cost of construction reasonably reflects prevailing market rates.

The date of the resolution forming the Reimbursement District shall be considered the date the District was formed.

D. When the applicant is other than the City, the resolution shall instruct the City Manager to enter into an agreement with the applicant pertaining to the Reimbursement District improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the public 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 applicant.
3. The total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s).
4. The annual fee adjustment set by the Council, if any.
5. The applicant shall guarantee the public improvement(s) for a period of 12 months from the date of installation.
6. The applicant shall defend, indemnify, and hold harmless the City

form any and all losses, claims, damage, judgments or other costs or expenses arising as a result of or related to the City's establishment of the district, including the City's costs or expenses related to collection of the Reimbursement Charges pursuant to this Chapter.

7. Any other provisions the Council determines necessary and proper to carry out the provisions of this Chapter.

E. Following adoption of the resolution establishing the Reimbursement District, the City Recorder may cause a copy of the resolution to be recorded in the County Assessor's office to provide public notice of the Reimbursement Charge applicable to the properties within the Reimbursement District. The recording shall not create a lien. A copy of the resolution shall be sent by regular mail to the owners of the subject properties and to any other person who may have requested a copy. Failure of the City to record, send a copy of the resolution to a person or property owner, or failure of a person or property owner to receive the copy, shall not invalidate any proceeding in connection with the establishment of a Reimbursement District.

F. No legal action intended to challenge or contest the formation of the Reimbursement District or the methodology or amount of the Reimbursement Charge shall be filed after sixty (60) days following formation of the Reimbursement District pursuant to this section.

13.17.040 Determining Reasonable Actual Costs.

A. The applicant shall not be entitled to reimbursement for any costs in excess of the reasonable actual costs. If the Reimbursement District is formed before the actual costs are known, the City Engineer's report and the Council's decision may be based on estimated costs. If estimated costs are used, the methodology or the certificate of payment, or both, shall provide for a recalculation of the cost no later than three months after completion and acceptance of the improvement by the City. An applicant shall demonstrate actual costs by submitting contracts, invoices, or such other documentation the City Engineer or Council deems sufficient. Actual costs shall not be deemed reasonable if the Council determines that the costs significantly exceed prevailing market rates for similar projects. If the Council finds that the actual costs are not reasonable, the Council may reduce the reimbursable costs to the prevailing market rate for similar projects.

B. The following costs shall not subject to reimbursement:

1. Costs for that portion of the public improvement that specially benefits the applicant's property.

2. Costs for the improvement that are not dedicated to and accepted by the City as a public improvement.

3. Costs for a public improvement that is required as a condition of development approval, except in cases where the nature and degree of the public improvement is disproportionate to the impacts of the development or where the City desires an oversized or additional improvement beyond that which is roughly proportional to the impacts of the development.

4. Costs other than the costs of construction. Costs of construction may include the reasonable acquisition and condemnation costs of acquiring off-site right-of-way and/or easements, engineering services as demonstrated by invoice, and the estimated annual percentage increase in such costs over the ten years during which the Reimbursement District will be in effect. Engineering may include surveying and inspection, and shall not exceed 13.5 percent of the total eligible construction costs.

5. Costs for the relocation of electrical, telephone, cable television or natural gas utility that benefit the applicant's property.

6. Costs for extra work and materials required to correct design deficiencies in construction to bring the improvement to City standards.

7. Costs for public improvements that are the minimum size necessary to meet City standards and serve the applicant's property.

8. Costs for a minor street alignment, except for the cost of right-of-way acquisition beyond the limits of the applicant's frontage along the improved street.

9. Costs attributable to profit or overhead of the person making the application.

10. Costs for improvements for which no application for a Reimbursement District has been received by the City within 180 days from the date of the City's acceptance of the improvements. Reimbursement Charges may not be applied retroactively upon benefited properties that have applied for development or connected to the improvement within the six (6) months immediately preceding the City's approval of a Reimbursement District application, or that have connected to or otherwise utilized the improvement before the City's approval of the application.

11. All costs where the applicant has received a credit against impact fees, SDC's or other connection fees for the same type of improvement.

12. Except with respect to the cost of traffic control signals, street improvement costs shall be recoverable only from those properties that lie adjacent or contiguous to a street improvement that would otherwise be required to be constructed, or a portion of which would otherwise be required to be constructed, by the adjacent or contiguous property upon development.

C. Nothing in this Chapter shall require inclusion of City-owned property within a Reimbursement District unless the Reimbursement District was established prior to the City's acquisition of the property. Property that is dedicated or conveyed to the City for public right of way purposes may or may not be included in a Reimbursement District as determined by the Council.

13.17.050 Obligation to Pay Reimbursement Charge.

A. An owner of property within any Reimbursement District shall pay to the City, in addition to any other applicable fees and charges, the Reimbursement Charge when any of the following events occur within ten (10) years from the District formation date:

- 1. A use of the property is expanded to create additional "units" as that term is defined in the City Engineer's report.
- 2. A building permit that will use or increase the use of a public improvement.
- 3. A connection to a public improvement or otherwise use of a public improvement that will increase the use of the public improvement.

B. "Increase the use" means:

- 1. For sanitary sewer or storm sewer improvements, to make a physical change, following construction of the improvement for which the District was formed, that requires a building or development permit on the property that increases the volume discharged into the line.
- 2. For water improvements, to make a physical change, following construction of the improvement for which the District was formed, requiring a building or development permit on the property that increases the amount of water used.
- 3. For street improvements, to make a physical change, following construction of the improvement for which the District was formed, requiring a building or development permit on the property that increases the trips on the street or creates a new

entrance onto the street.

C. The Reimbursement Charge is due and payable in full, or provision for installment payments or other acceptable security has been made, and payment is a precondition to receiving the first City permit applicable to the development activity, or, in the case of a connection to a line, as a precondition to receiving the connection permit.

D. A person who becomes obligated to pay the Reimbursement Charge as the result of a connection to a line constructed through the local improvement district process and who owns property within the local improvement district against which an assessment is levied may also be assessed a Reimbursement Charge as an added portion of the local improvement district assessment.

E. Inclusion in a Reimbursement District and payment of a Reimbursement Charge may be made a condition of approval of annexation of property.

F. No person shall be required to pay a Reimbursement Charge on an application or upon property for which the Reimbursement Charge has been previously paid, or for which a Proportionate Contribution, as defined in Chapter 3.20, has been previously paid, unless payment was for a different public improvement.

13.17.070 Right of Reimbursement.

A. The right to reimbursement under this Chapter is transferable and assignable after the applicant or their assignee delivers written notice to the City advising the City to whom future payments must be made.

B. No City officer or employee or agent, acting in their official capacity, shall be liable for payment of any Reimbursement Charge, accrued percentage rate or portion thereof. Only those payments that the City has received from or on behalf of properties within a Reimbursement District shall be payable to the person holding the right to reimbursement. The City's general fund or other revenue sources shall not be liable for or subject to payment of outstanding but unpaid Improvement Finance Charges.

C. Upon receipt of a Reimbursement Charge, or portion thereof, the City shall record the payment on the City lien docket with respect to the property for which the payment is made. Within ninety (90) days of receipt, the City shall remit the funds to the person holding the right of reimbursement, less an amount equal to a certain percentage of the payment, to be set by Council resolution, for the cost of administration of the program by the City.

13.17.080 Ownership of Public Improvement. Public improvements installed pursuant to Reimbursement District agreements shall become and remain the sole property of the City.

13.17.090. Prohibited Conduct.

A. No person may cause or maintain a connection to, or use property or a public improvement thereon for which a Reimbursement Charge has been established and which is due and payable, unless the Charge has first been paid.

B. Violation of this section is a civil infraction, punishable by a fine not to exceed \$500. Each day that a prohibited connection or use exists constitutes a separate violation.

C. The remedies provided under this section are cumulative to any other remedies provided by law.

13.17.100 Unpaid Reimbursement Charges. Whenever the full Reimbursement Charge has not been paid and collected for any reason after it is due, the City Manager shall report to the Council the amount of the uncollected reimbursement, the legal description of the property on which the Reimbursement Charge is due, the date when the Reimbursement Charge was due and the name of the property owner. The Council shall then set a public hearing date and direct the City Manager to give notice of the public hearing to each of the property owners, together with a copy of the City Manager's report concerning the unpaid Reimbursement Charges. The notice may be either by certified mail or personal service. At the public hearing, the Council may accept, reject, or modify the City Manager's report. If the Council determines that a Reimbursement Charge is due but has not been paid for whatever reason, the City may take any action including all legal or equitable means necessary to collect the unpaid amount. An unpaid Reimbursement Charge shall prohibit any issuance of permits by the City for the property.

Section 3.20.090 of the Hood River Municipal Code is amended as follows:

CHAPTER 3.20 – ADEQUATE PUBLIC FACILITIES AND CONTRIBUTION

Sections:

Ordinance 1849

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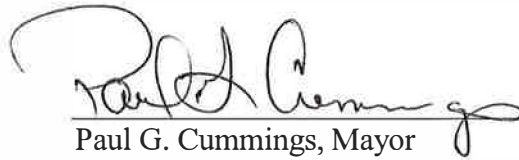
- 3.20.010 General
- 3.20.020 Findings Required
- 3.20.030 Qualified Public Facility
- 3.20.040 Impact Study
- 3.20.050 Alternate Findings Allowed
- 3.20.060 Conditions and Limits
- 3.20.070 Project Determinations
- 3.20.080 Final Determination
- 3.20.090 Application of Funds
- 3.20.100 Time Limits

[Note: this ordinance is amending Section 3.20.090 only]

3.20.090 Application of Funds. Proportionate Contribution funds received by the City shall be deposited in a designated fund and applied by the City to the construction and installation of the Necessary Improvements, unless the Proportionate Contribution is also a Reimbursement Charge as defined in Chapter 13.17, in which case the provisions of Chapter 13.17 regarding disposition of the funds shall apply. Any unused Proportionate Contribution funds remaining upon completion and the City's acceptance of the Necessary Improvements shall remain in the designated City fund and may be used by the City only for improvements to public facilities in accordance with the designated fund.

Read for the first time: July 28, 2003.

Read for the second time and passed: July 28, 2003, to become effective thirty (30) days hence.


Paul G. Cummings, Mayor

ATTEST:


Jean M. Hadley, City Recorder