

## **ORDINANCE NO. 359-2018**

### **AN ORDINANCE ENACTING CHAPTER 3.07 IN THE MUNICIPAL CODE TO PROVIDE FOR THE CREATION OF REIMBURSEMENT DISTRICTS**

#### **Findings.**

- A.** Providing necessary and adequate public improvements and infrastructure to new development in the City of Hubbard requires a broad range of regulatory and financing mechanisms; and
- B.** The City Council wishes to encourage timely investment in public improvements and infrastructure while assuring that development contributes only its fair share of the cost of needed infrastructure to the extent practicable; and
- C.** Current infrastructure financing involves a complex set of sources and regulations and the City Council wishes to provide a new option to assure that needed infrastructure is in place when it is needed to serve development; and
- D.** Reimbursement districts are a financing mechanism that can provide for private investment in needed infrastructure improvements while allowing the developer to recover a proportionate share of the cost of the improvements from properties that benefit from the improvements; and
- E.** The Hubbard Municipal Code does not currently provide for or authorize the creation of reimbursement districts.

#### **BASED ON THE FINDINGS, THE CITY OF HUBBARD ORDAINS AS FOLLOWS:**

**Section 1.** Chapter 3.07 is hereby added to the Hubbard Municipal Code as follows:

#### **Chapter 3.07 REIMBURSEMENT DISTRICT FINANCING**

##### **3.07.010 Definitions**

The following definitions apply unless in-consistent with the context:

- (1) “Developer” means a person who is required to or chooses to finance some or all of the cost of a public street, water or sewer improvement such that it will be 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.
- (2) “Development Permit” means any final land use decision, limited land use decision, expedited land division decision, partition, subdivision, planned unit development, applicable public or private infrastructure permit, or driveway permit.
- (3) “Person” means a natural person, the person's heirs, executors, administrators or assigns; a firm, partnership, corporation, association or legal entity; the person’s successors or assigns; and any agent, employee, or representative thereof.
- (4) “Public Improvement” means any construction, reconstruction or upgrading of public water, stormwater, sanitary sewer, or street improvements.

- (5) “Reimbursement Agreement” means an agreement between the developer and the city that is authorized by the city council and provides for the installation of, and reimbursement for, the cost of public improvements.
- (6) “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.
- (7) “Reimbursement Fee” means a fee described in the reimbursement agreement and set by city council resolution that is required to be paid by a person who develops property that benefits from the public improvement.
- (8) “Resolution” means a resolution approved by city council that determines the boundaries of the reimbursement district and the methodology for allocating a reimbursement fee to each benefitted property that considers the cost of reimbursing the developer for financing the construction of the public improvement(s).

### **3.07.020 Application process**

- (1) A person who is required to or chooses to finance some or all of the cost of a public improvement that will be available to provide service to property other than the person’s property may by written application filed with the city recorder request that the city establish a reimbursement district. The public improvement must be of a size greater than 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 from the improvement.
- (2) The application shall be accompanied by an application fee, set by the city council, that is reasonably calculated to cover the city’s cost of preparing the report and notice pursuant to section 3.07.030.
- (3) The application shall include the following:
  - (A) A written description of the location, type, and size of each public improvement for which reimbursement is sought.
  - (B) A map that shows the boundaries of the proposed reimbursement district, the legal boundary of each property in the proposed district, and the tax lot number and size of each property.
  - (C) A map that shows the properties to be included in the proposed reimbursement district; the zoning designation, the front footage and square footage of each property, 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.
  - (D) The actual or estimated cost of each public improvement(s) prepared by an architect, engineer or other licensed professional in accordance with established eligibility criteria and guidelines.
- (4) The application may be submitted to the city prior to the installation of the public improvement but not later than 270 days after completion and acceptance of the public improvements by the city. This time period may be extended by the council for good cause shown.

### **3.07.030 Report**

The city shall review an application to establish a reimbursement district and evaluate whether the district should be formed. The city may require that the applicant provide additional information to assist in the evaluation. The city shall prepare a written report for the council that considers and makes a recommendation concerning each of the following factors:

- (1) 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 the developer's property.
- (2) The size and boundary of the reimbursement district.
- (3) The actual or estimated cost of the public improvement(s) 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.
- (4) 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 that may be partitioned, subdivided, altered or modified in the future. The city may use any methodology for apportioning costs to a benefitted property that is just and reasonable. The methodology should account for unbuildable areas such as dedicated right-of-way, utility easements or open space.
- (5) The amount to be charged by the city as an administration fee for the reimbursement agreement. The administration fee shall be fixed by the council and included in the resolution approving 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.
- (6) Whether the public improvements meet, or will meet, city standards.
- (7) Whether it is fair and in the public interest to create a reimbursement district.

### **3.07.040 Amount to be reimbursed**

- (1) A reimbursement fee shall be computed by the city for all lots or parcels within the reimbursement district that will benefit from the public improvement(s), including the developer's property. The fee shall be calculated separately for each lot or parcel and each public improvement. The developer is not entitled to reimbursement of the fee that is allocated to the developer's property.
- (2) The cost to be reimbursed to the developer is limited to the cost of construction engineering, construction, and off-site dedication of right-of-way. Construction engineering may include surveying and inspection costs but may not exceed 13.5 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.
- (3) Reimbursement is not 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 that are eligible for systems development charge credits, other costs contributed to the infrastructure by another public or private entity, the application fee required under section 3.07.020, or any cost that cannot be clearly documented.

### **3.07.050 Public hearing**

- (1) Within 45 days after the city has completed the report required in section 3.07.030, the council shall hold a public hearing on the proposed reimbursement district and provide an

opportunity for public comment. Developer shall provide the city with documentation illustrating the proposed infrastructure for consideration and proposed properties for inclusion within the 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 due to remonstrance. The council has the sole discretion after the public hearing to decide whether to approve forming the reimbursement district.

- (2) Not less than 10 days prior to the public hearing, the developer and all owners of property within the proposed district shall be notified by the city of the public hearing and the purpose thereof. Notice shall be accomplished by regular and certified mail or by personal service. Notice is deemed effective on the date the notice is mailed. Failure of the developer or an affected property owner to receive notice does not invalidate or otherwise affect the reimbursement district resolution or the council's authority to approve the same.

### **3.07.060 City council action**

- (1) After the public hearing held pursuant to section 3.07.050, the council shall approve, reject or modify the recommendations contained in the report. The council's decision shall be set forth in a resolution. If a reimbursement district is approved, the resolution shall include the report as approved or modified, and specify that payment of the reimbursement fee for each designated lot or parcel is a precondition of receiving any city development permits, building permits or other city permits necessary to develop the lot or parcel as provided for in section 3.07.100.
- (2) The resolution may establish an interest rate to be applied to the reimbursement fee as a return on the investment of the developer. The interest rate, if established, shall be fixed and computed against the reimbursement fee as simple interest and will not compound.
- (3) The resolution shall instruct the city recorder to enter into an agreement with the developer regarding the public improvement(s). 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 include at least the following:
  - (A) The public improvement(s) shall meet all applicable city regulations and standards.
  - (B) The total amount that may be reimbursed to the developer.
  - (C) The total amount of reimbursement shall not exceed the developer's actual cost of the public improvement(s), subject to the limitation of section 3.07.040(B).
  - (D) The developer shall guarantee the public improvement(s) for the city required minimum maintenance period after the date of acceptance by the city.
  - (E) 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 council decide to pursue collection of an unpaid reimbursement fee under section 3.07.100(J).
  - (F) A clause in a form acceptable to the city attorney stating that the developer agrees that the city is not liable for any of the developer's alleged damages, including all costs and attorney fees, under the agreement or as a result of the formation or administration of the reimbursement district, and that the developer waives any claim, suit or other action of any kind against the city, including a claim in inverse

condemnation, because the developer has benefited by the city's approval of its development and the required improvements.

(G) Other provisions the city determines necessary and proper to carry out the provisions of this subchapter.

- (4) If a reimbursement district is established by the council, the date the district is formed is the date that the council adopts the resolution forming the district.

### **3.07.070 Notice of council decision**

The city shall notify the developer and all owners of real property within the district of the council's decision to adopt or reject the reimbursement district. If the council approves the district, the notice shall include a copy of the resolution, the date it was adopted, and a short explanation that describes the amount of the reimbursement fee and that the property owner is legally obligated to pay the fee pursuant to this subchapter.

### **3.07.080 Recordation of resolution**

The city recorder shall cause notice of district formation and nature of the reimbursement district to be filed in the office of the Marion County clerk to provide notice to a potential purchaser of property within the district. Filing notice with the clerk shall not create a lien. Failure to make such filing shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

### **3.07.090 Contesting the reimbursement district**

Legal action to contest formation of the district or the reimbursement fee, including the amount of the fee for any lot or parcel, must be filed within 60 days following the date the resolution approving the reimbursement district is adopted. Any such legal action shall be exclusively by Writ of Review pursuant to ORS 34.010 to ORS 34.102.

### **3.07.100 Obligation to pay reimbursement fee**

- (1) A person who applies to the city for a permit to develop property within a reimbursement district shall, upon approval of the permit, pay the city, in addition to any other applicable fees and charges, the reimbursement fee established by the council, if within 10 years from the date of the resolution forming the reimbursement district, the person applies for any of the following permits:
- (A) A building permit for a new building;
  - (B) Building permit(s) for any addition(s) of a building, which cumulatively exceed 25 percent of the existing square footage in any 36-month period;
  - (C) A development permit as defined in this subchapter;
  - (D) A permit issued for connection to a public improvement.
- (2) The city's determination of the person responsible for paying the reimbursement fee and when the fee is due is final.
- (3) 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 of the person responsible to pay the reimbursement fee. Only those payments the city receives 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.

- (4) Nothing in this subchapter is intended to modify or limit the authority of the city to provide or require access management.
- (5) Nothing in this subchapter is intended to modify or limit the authority of the city to enforce development conditions which have been or may be imposed against property in the reimbursement district.
- (6) Nothing in this subchapter is intended to modify or limit the authority of the city to impose development conditions against property in the reimbursement district as it develops.
- (7) A person is not required to pay a reimbursement fee for a public improvement if the reimbursement fee allocated to property for that public improvement has been previously paid. A permit will not be issued for any of the activities listed in section 3.07.100(A) unless the reimbursement fee, together with the amount of accrued interest, has been paid in full. Where a land use permit has been approved but no subsequent building permits or other development permits are requested or issued, the requirement to pay the reimbursement fee expires if the underlying land use approval expires.
- (8) A reimbursement district established under this subchapter shall remain in full force and effect for a period of 10 years from the date of the resolution approving district formation. The developer may file with the city a written application to extend the reimbursement district for up to five additional years. The application shall describe 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 section 3.07.070 and hold a public hearing at which the council will receive public comment. After the public hearing the council may, by resolution, approve the extension for up to five 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 council, the city shall provide notice of the council's decision as provided in section 3.07.070 and file a copy of the resolution with the county clerk as provided in section 3.07.080.
- (9) The reimbursement fee is immediately due and payable to the city upon issuance of a permit or connection to a public improvement as provided in this section 3.07.100. 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.
- (10) Whenever the full reimbursement fee has not been paid and collected for any reason after it is due, the city recorder shall report to the 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 name or names of the person(s) responsible for payment. The council shall set a public hearing date and provide notice of the hearing to the owner(s) of the subject property and the person(s) responsible for paying the reimbursement fee if different. Notice may be made by regular mail, certified mail or personal service. At the public hearing, the council may accept, reject or modify the report required by section 3.07.030. If the council determines that the reimbursement fee is due but has not been paid for any reason, the council may, in its sole discretion and by resolution, take any action it deems appropriate, including all legal or equitable means necessary to collect the unpaid amount. However, nothing in this subchapter requires the city to take action to collect such amounts.

### **3.07.110 Public improvements**

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

### **3.07.120 Multiple public improvements**

A reimbursement district may be formed and reimbursement collected for more than one public improvement.

### **3.07.130 Collection and payment—Other fees and charges**

- (1) The developer shall receive all reimbursement fees collected by the city from persons developing property within the district, subject to section 3.18.100(H). The reimbursement fees 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. The city may retain an amount as set forth in the council resolution creating the reimbursement district to cover its administrative costs.
- (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.

### **3.07.140 Nature of the fees**

The council finds that the fees imposed by this chapter are directly related and proportionate to the benefit conferred on property within the reimbursement district, and are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

### **3.07.150 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.

**Section 2.** This Ordinance shall be effective thirty days from its adoption.

**The foregoing Ordinance was passed by the City Council of the City of Hubbard this 13th day of November 2018, by the following vote:**

<b>Ayes</b>	_____
<b>Nays</b>	_____
<b>Absent</b>	_____

**Whereupon, the Mayor declared the motion to be carried and the Ordinance adopted.**

**Passed and approved by the City Council of the City of Hubbard this 13<sup>th</sup> day of November 2018.**

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Charles Rostocil, Mayor

ATTEST:

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Vickie L. Nogle, MMC  
Director of Administration/City Recorder

Approved by the City Attorney:

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Beery Elsner and Hammond LLP