

**ORDINANCE NO. 644**

**AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE 3.116 CONCERNING REIMBURSEMENT FOR CONSTRUCTION OF STREETS AND OTHER PUBLIC FACILITIES**

WHEREAS, Wilsonville Code Section 3.116 provides a strategy creating “Reimbursement Districts” to finance public infrastructure. A developer who first funds the construction of certain infrastructure facilities is reimbursed with refunds the City charges to owners of property benefited by the first developer’s improvement; and,

WHEREAS, the reimbursement strategy can be a valuable tool in infrastructure finance in that it relieves the City from the use of general funds, is more responsive and fairer to the first developer in an area, and, unlike a Local Improvement District, is simpler to create, does not involve property liens and does not require the consent of two thirds of the property owners included in the district; and,

WHEREAS, in current operation, the developer who undertakes to pay the cost of extending a facility makes application to the City Recorder, who forwards the request to the City Engineer, who in turn reviews the request against City master plans and engineering standards, and reports to the City Council. If the City Engineer finds the proposal to be feasible and desirable for orderly development, the engineer recommends to Council a refund method to fairly apportion the estimated cost of the facility extension to benefiting property owners. Council then may approve the proposal in whole or in part. Following the preparation of plans and specifications for the work, the developer either constructs the project or pays the total estimated cost of the project to the City for construction by public contract. Then, for a period of up to ten years, the City collects and remits to the developer the refund amount that must be paid by third parties prior to making use of the subject facility; and,

WHEREAS, concerns about the legality of reimbursement districts for street construction has kept streets from the list of public services and utilities covered by the strategy. However, evolving case law and the addition of discretion-focusing criteria for the approval and administration of reimbursement districts support application of the strategy to street construction; and,

WHEREAS, in light of the foregoing, the public interest is served by adding streets to the list of reimbursable, developer/city-financed facilities, detailing the basis for reimbursement determinations, allowing for facility construction by the developer rather than the City, and providing miscellaneous other amendments to the section; and

WHEREAS, to facilitate the administration of Reimbursement Districts, it is necessary for the Council and City Manager to adopt, amend, and administer reasonable rules and regulations, and a copy of draft Manager's Rules and Regulations, Administration of Reimbursement Districts, proposed for adoption by Council, is marked as Exhibit A, attached hereto and incorporated herein;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. That W. C. 3.116 is hereby amended to read as follows:

**3.116 REIMBURSEMENT FOR EXTENSIONS OF STREETS, WATER, STORM DRAINAGE AND SEWER LINES OR OTHER UTILITY SERVICES.**

(1) If any person, on application and approval, ~~agrees to pay~~ the costs of ~~extending~~ improving a street, water, storm drainage, or sewer ~~main or lateral line~~ facility or any cable or other television, telephone, electrical, natural gas or other utility, to serve ~~his~~ the owner's property, and the ~~extension of such line~~ improvement or utility would be adjacent to or serve other property ~~other than his own~~ so that street, water, storm drainage, sewer service, cable or other television, telephone, electrical, natural gas or other utility for either commercial, industrial or domestic use is provided for such other property without further improvement or extension of the lines or utilities, the City shall require the owners of the other property prior to providing street access, water, storm drainage, sewer service, or any cable or other television, telephone, electrical, natural gas or other utility service to such other property, to refund to the person ~~required to paying~~ the costs of ~~extending~~ improving the street, water, storm drainage, sewer lines or any cable or other television, telephone, electrical, natural gas or other utility service a pro rata portion of the costs of the extension. The right of the City to require such refunds shall not continue for more than ten (10) years after the date of installation of the ~~extension~~ improvement ~~of the water, storm drainage, sewer line or any cable or other television, telephone, electrical, natural gas or other utility.~~ , unless, for good cause shown, the City Council authorizes an extension. Refunds are not intended to limit or replace, and are in addition to, any other existing fees or charges collected by the City. The amount to be refunded shall be determined by the council, and such determination shall be final.

Once a determination has been made, the City Recorder shall enter in the docket of City liens a statement of 1) the refund amount upon each particular lot, parcel

of land, or portion thereof, together with the fact that, **in lieu of lien foreclosure, the City shall require that,** prior to providing **street access,** water, storm drainage, sewer service, or any cable or other television, telephone, electrical, natural gas or other utility service to the effected property, the refund amount shall be paid to the City, **2)** the date of installation of the extension **or** improvement, **3)** the date ~~to require~~ such a refund shall ~~not~~ continue, **for which is not** more than ten (10) years after the date of the installation, **and 4)** a description of the improvement and the name of the owners. Upon the expiration of the ten (10) year period and without a refund becoming due and owing, the City Recorder shall remove the entry in toto from the city's lien docket.

(2) Any person **proposing** reimbursement ~~who undertakes to pay of~~ the costs of ~~extending~~ **improving a street,** water, storm drainage, sewer service, or any cable or other television, telephone, electrical, natural gas or other utility which, ~~when extended,~~ will be adjacent to **other** property ~~other than his own,~~ shall first file with the City Recorder **an application, accompanied by a processing fee established by the City Council, which shall include a description and map outlining the improvement areas showing the adjacent properties which can be served from the extension of such line or utility** **improvement and the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other similar evidence.** The City Recorder shall make a copy thereof and deliver it to the City ~~e~~Engineer who shall inspect the site of the proposed ~~extension~~ improvement and report in writing to the City Recorder whether or not the ~~extension~~ **improvement** is feasible, desirable and necessary for the orderly development and expansion of the city's **transportation system,** sewage collection, storm drainage, water distribution systems or any cable or other television, telephone, electrical, natural gas or other utility services. Should it be determined by the city's engineer that it is not economically feasible or practical from an engineering study and investigation, the City Recorder shall report such facts to the person who filed the application and return the description and map. To be feasible and desirable for the orderly development and expansion of the city's **street,** sewer, storm drainage, water systems, or any cable or other television, telephone, electrical, natural gas or other utility services, the City ~~e~~Engineer shall **review City-approved plans prepared by the developer, or alternatively,** prepare or cause to be prepared all necessary plans and specifications for the proposed project. The City ~~e~~Engineer shall also prepare or cause to be prepared a recommendation to the Council of a refund method to fairly apportion on a pro rata basis the costs of the extension in keeping with subsection (1) above, **considering the development potential of adjacent properties, the cost of improvements, prior contributions by property owners, the value of unused capacity, rate making principles employed to finance public improvements and other factors deemed relevant.** The Council may adopt, in whole or in part, the engineer's recommendation, or establish a refund method as it deems appropriate, just and reasonable. **Notice and the opportunity for public hearings and challenge to Council action shall be as required by law.**

(3) Upon approval by the City Council of the application for the ~~extension~~ **reimbursement for improvement** of the **street**, water, storm drainage, sewer lines, cable or other television, telephone, electrical, natural gas or other utility services, and after preparation of the plans and specifications for the work project, the applicant shall **proceed to construct the facility as determined by the City Engineer, or** pay to the City Recorder the total estimated costs of the project, including the legal, engineering and supervision costs. **In the latter case,** ~~Thereafter,~~ the City Recorder shall advertise in a local newspaper once a week for two successive weeks for sealed bid proposals for construction of the improvement project. The bid proposals shall be publicly opened at either a regular or special meeting of the City Council held at least ten (10) days after the first publication for bids. The City Council may waive any irregularity in bidding procedures, reject any or all bids or award a contract to the bidder who, in the opinion of the City Council is best qualified to undertake and perform fully in a satisfactory manner the public improvements which are to be constructed. If there are not any bidders or if all bids are rejected, the City Council may direct the work to be completed either by a City work force or it may award a contract to any person, firm or corporation who, in the opinion of the City Council, is competent and qualified to perform the work in accordance with the plans and specifications. **The city may pursue any alternative method of public improvement construction provided in public contracting law.** The City Council shall confer with the applicant and obtain his approval before awarding the contract or before deciding to perform the work by the City work force.

(4) Notwithstanding any provisions to the contrary, in the event any utility service is provided pursuant to a franchise agreement, then Council shall direct the work to be completed pursuant to any such franchise agreement.

(5) If, prior to the commencement of construction, an applicant withdraws his the application or notifies the City of his the desire to abandon the project, ~~he~~ **the applicant** shall pay to the City, in full, its actual costs incurred to that time and including, though not exclusively, all legal and engineering costs.

(6) **The applicant may include the City and the application may be made following improvement, but no later than three months after completion and acceptance by the City of the improvement. If the application is filed after construction, the application shall include the actual cost of construction as evidenced by a contract, receipts, bids or other similar documents.** In the event the City shall construct or shall pay for the construction of **street**, water, storm drainage, sewer lines, cable or other television, telephone, electrical, natural gas, or other utility service within privately owned property, and there is no agreement to the contrary, the City shall require the owners of said property prior to providing such **street access**, water, storm drainage, sewer service, cable or other television, telephone, electrical, natural gas, or other utility services to such property, to refund to the City a pro rata portion of the costs of the extension. The

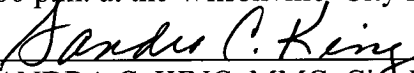
provisions of this section shall apply to the owners of said property the same manner as subsection (1) is applied to the other property owners described therein.

(7) Any street, water, storm drainage, sewer line, cable or other television, telephone, electrical, natural gas, or other utility service extension project which is to be constructed under the provisions of this section shall be done under the supervision and direction of the City eEngineer or an engineer employed by the City to supervise such project and in accordance with sections of this Code relating to such matters; and the successful bidder for any such work contract shall furnish to the City a full performance, payment and street restoration bond issued by a corporate surety in an amount and form as may be approved by the City Council. *(Amended by Ordinance #278 – August 19, 1985.)*

**(8) Consistent with this section, the City Manager is authorized to adopt, administer and, from time to time, amend rules and regulations necessary to fully administer its terms and shall be entitled Manager's Rules and Regulations, Administration of Reimbursement Districts.**

Section 2. That document entitled Manager's Rules and Regulations, Administration of Reimbursement Districts, attached hereto as Exhibit A and incorporated herein, is hereby adopted by Council and, subject to amendments the City Manager is empowered to make, are considered part of the Code as if fully set forth.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 4th day of February, 2008, at the hour of 7 p.m. at the Wilsonville City Hall, 27999 Town Center Loop E., Wilsonville, Oregon, and scheduled for second reading on the 3rd day of March 2008, commencing at the hour of 7:00 p.m. at the Wilsonville, City Hall.

  
SANDRA C. KING, MMC, City Recorder

ENACTED by the City Council on the 3<sup>rd</sup> day of March 2008, by the following votes:

YEAS: -3- NAYS: -0-

  
SANDRA C. KING, MMC, City Recorder

DATED and signed by the Mayor this 3rd. day of March 2008.



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ALAN KIRK, COUNCIL PRESIDENT

SUMMARY OF VOTES:

Mayor Lehan	<u>Excused</u>
Councilor Kirk	<u>Yes</u>
Councilor Ripple	<u>Yes</u>
Councilor Nunez	<u>Yes</u>
Councilor Knapp	<u>Excused</u>

Attachments:

Exhibit A. Managers Rules and Regulations

**MANAGER'S RULES AND REGULATIONS  
ADMINISTRATION OF REIMBURSEMENT DISTRICTS**

**1. Definitions**

(1) "Applicant" means a person who is required or chooses to finance some or all of the cost of a street, water, sewer, or other 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. The "applicant" may be the City.

(2) "Street Improvement" means a street or street improvement conforming with standards in the Transportation Systems Plan, Wilsonville Planning and Land Development Code and Public Works Standards and 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.

(3) "Water Improvement" means a water or water line improvement conforming with standards in the Comprehensive Plan, Wilsonville Planning and Land Development Code and Public Works Standards and including but not limited to the those facilities and appurtenances necessary for any conveyance of water for consumption or for fire fighting demands.

(4) "Sewer Improvement" means a sewer or sewer line improvement conforming with standards in the Wilsonville Comprehensive Plan, Planning and Land Development Code and Public Works Standards and including but not limited to those facilities necessary for the extension of extension of any sewer line.

(5) "Storm Drainage Improvement" means a storm drainage, storm water management or associated facility conforming with the standards in the Wilsonville Comprehensive Plan, Planning and Land Development Code and Public Works Standards and including but not limited to any facilities necessary for the management of surface water.

(6) "Reimbursement District" means the area which is determined by the City Council to derive a benefit from the construction of street, water, sewer or other improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

(7) "Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement.

**2. Application for a Reimbursement District**

(1) Any person who is required to or chooses to finance some or all of the cost of a street, water, storm water, sewer improvement, or other service under Wilsonville code section 3.116, which is available to provide service to third parties may, by written application filed with the City Recorder, request that the City establish a reimbursement district. The street, water, sewer or other improvements must include improvements in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval and must be available to provide service to property other than property owned by the applicant. Examples include but shall not be limited to full street improvements instead of half street improvements, off site sidewalks, connection of street sections for continuity, extension of water lines and extension of sewer lines. The City may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by the City Manager, sufficient to cover the cost of administrative review and notice pursuant to these rules.

(2) The application shall include the following:

(a) A description of the location, type, size and cost of the public improvement to be eligible for reimbursement.

(b) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

(c) The estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the City Engineer.

(d) The estimated date of completion of the public improvements.

(e) Calculations showing existing and required capacity to adequately support the land uses for property in the reimbursement district described in the Comprehensive Plan and Planning and Land Development Code.

(f) Traffic impact study

### **3. City Engineer's Report**

The City Engineer shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Engineer may require the submittal of other relevant information from the applicant in order to assist in the evaluation. The Engineer shall prepare a written report for the City Council, considering and making recommendations concerning the following factors:



(a) Whether the applicant will finance some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant;

(b) The area to be included in the reimbursement district;

(c) The estimated cost of the street, water, sewer or other improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

(d) A methodology for spreading the cost among the parcels within the reimbursement district and where appropriate defining a "unit" for applying the reimbursement fee to property which may, with City approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the City Engineer. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered, a water-related contribution in the same location as a sewer improvement would not be considered);

(e) The amount to be charged by the City for administration of the agreement by the City. The administration fee shall be fixed by the Manager. The administration fee is due and payable to the City at the time the agreement referenced in these rules is signed.

(f) The period of time that the right to reimbursement exists if the period is less than ten years.

#### **4. Amount to be Reimbursed**

(1) The cost to be reimbursed to the applicant shall be limited to the cost of construction, engineering, and off-site right of way. Engineering shall include surveying and inspection and shall not exceed 13.5% of eligible 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 applicant from a third party to complete off-site improvements.

(2) No reimbursement shall be allowed for financing costs, land or easements dedicated by the applicant, costs which are eligible for traffic impact fee credits or systems development charge credits, or any costs which cannot be clearly documented.

(3) No reimbursement shall be allowed for construction costs that occur prior to the formation date of the reimbursement district, except where the applicant is proposing a reimbursement district for an improvement that has been completed and accepted by the City not prior to three months of application.

(4) Reimbursement for legal expenses shall be allowed only to the extent that such expenses relate to the preparation and filing of an application for reimbursement, and to working with the City through the Engineer's Report.

(5) A reimbursement fee shall be computed by the City for all properties which have the opportunity to utilize the improvements, including the property of the applicant for formation of a reimbursement district. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant.

## **5. Public Hearing**

Within a reasonable time after the City Engineer has completed the report required in W.C. 3.116, the City Council may hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement 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 a resolution approving and forming the reimbursement district shall be adopted.

## **6. Notice of Public Hearing**

If the Council chooses to conduct a public hearing, not less than 10 nor more than 30 days prior to any public hearing, 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 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant 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.

## **7. City Council Action**

(1) With or without a public hearing, the City Council shall approve, reject or modify the recommendations contained in the City Engineer's report. The City Council's decision shall be embodied in a resolution. If a reimbursement district is

established, the resolution shall include the City Engineer's report as approved or modified.

(2) The City shall enter into an agreement with the applicant pertaining to the reimbursement district improvements. The agreement shall be contingent upon the improvements being accepted by the City. The agreement, at a minimum, shall contain the following provisions:

(a) The public improvement(s) shall meet all applicable City standards.

(b) The estimated total amount of potential reimbursement to the applicant.

(c) The applicant 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 district.

(d) The applicant shall acknowledge that, except as provided in Wilsonville Code section 3.116, the City is not obligated to collect the reimbursement fee from affected property owners.

(e) Other provisions as the City determines necessary and proper to carry out the provisions of the Code.

(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.

(4) The City Council resolution reimbursement agreement shall reflect the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, water, sewer or other improvement within the reimbursement district.

## **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. 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 of the fee.

## **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 Recorder so as to provide notice to potential purchasers of property within the district. Said recording shall not

create a lien. Failure to make such a recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

#### **10. 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 60 days following adoption of a resolution establishing a reimbursement district.

#### **11. Final Accounting**

(1) Within three months after completion and acceptance of the improvements, the applicant shall submit to the City Engineer the actual cost of the improvements as evidenced by receipts, invoices or other similar documents. The City Engineer shall review the actual costs and shall prepare a written report for the City Council.

(2) The final cost shall not exceed by more than 10% the cost estimated at the time of reimbursement district formation unless an exception is approved by the City Council. An exception may be approved only if the applicant can show legitimate circumstances beyond the control of the applicant which cause the cost increase.

(3) Within a reasonable time after the City Engineer has completed the report required in subsection (1), the City Council may hold an informational public hearing in which any person shall be given the opportunity comment on the recommended revisions.

(4) Failure to provide the documentation required by this section shall result in the automatic lapse of any resolution adopted by the City Council pursuant to W.C. 3.116. Following receipt of the Engineer's report and any final public hearing provided for herein, and subject to the limitations provided for herein, the City Council shall have the authority to approve, rescind, or modify the reimbursement district.

#### **12. Obligation to Pay Reimbursement Fee**

(1) 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 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:

(a) A building permit for a new building;

(b) Building permit(s) for any addition(s), modification(s), repair(s) or alteration(s) of a building, which exceed twenty-five percent (25%) of the value of the

building within any 12-month period. The value of the building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;

(c) Any alteration, modification or change in the use of real property, which increases the number of parking spaces required under the Wilsonville Planning and Land Development Code in effect at the time of permit application.

(d) Connection to or use of a water improvement, if the reimbursement district is based on the water improvement;

(e) Connection to or use of a sewer improvement, if the reimbursement district is based on the sewer improvement;

(f) Connection to or use of a street improvement, if the reimbursement district is based on the street improvement.

(g) Connection to or use of any other line, utility or improvement.

(2) The City's determination of who shall pay the reimbursement 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.

(3) 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.

(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 a different type of improvement. No permit shall be issued for any of the activities listed in the section immediately preceding unless the reimbursement fee has been paid in full.

### **13. Annual Fee Adjustment**

On recommendation of the City Manager, the City Council may grant an annual reimbursement fee adjustment.

(1) An annual fee adjustment shall be applied to the reimbursement fee beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the person or the City. The annual fee adjustment shall either be fixed and computed against the reimbursement fee as simple interest that will not compound, or be tied to the Construction Cost Index, C.P.I., or other index. The amount of the fee adjustment shall be determined at the time that a district is formed

and shall be the same each year, but may be determined at a later date provided written notice to landowners in the district is given.

(2) If a variable adjustment is not adopted, each fiscal year the Finance Director may recommend to the City Council an interest rate to be used in determining the annual fee adjustment for reimbursement districts. The City Council shall consider the recommendation of the Finance Director and shall adopt an interest rate to be used in determining the annual fee adjustment. The interest rate adopted by the City Council shall be applied to all reimbursement districts formed during the fiscal year, for which annual fee adjustments are approved.

#### **14. Administration**

(1) The right of reimbursement is assignable and transferable after written notice is delivered to the City, advising the City to whom future payments are to be made.

(2) The City shall establish separate accounts for each reimbursement district. Upon receipt of a reimbursement fee, the City shall cause a record to be made of that property's payment and remit the fee to the person who requested establishment of the reimbursement district or their assignee.

(3) 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.

#### **15. Extension of Reimbursement Period**

(1) Upon application, and for good cause shown, the City Manager may recommend, and the City Council may authorize, a limited extension of the reimbursement period.