ORDINANCE NO. 1994

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.30 OF MILWAUKIE MUNICIPAL CODE (MMC) GOVERNING REIMBURSEMENT DISTRICTS.

WHEREAS, THE CITY ALLOWS THE INITIATION OF REIMBURSEMENT DISTRICTS TO SPREAD THE COSTS OF NEEDED PUBLIC IMPROVEMENTS ACROSS THE PROPERTIES THAT BENEFIT FROM SUCH IMPROVEMENTS; and

WHEREAS, THE EXISTING CODE ONLY PROVIDES FOR A MAXIMUM REIMBURSEMENT DISTRICT TERM OF FIFTEEN YEARS; and

WHEREAS, THE CITY COULD MORE EQUITABLY APPORTION THE COST OF A PUBLIC IMPROVEMENT PROJECT OVER A LONGER PERIOD OF TIME;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Milwaukie Municipal Code Chapter 13.30 is amended to read as set forth in Exhibit A..

Read the first time on 3/3/09, and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the City Council on 3/3/09.

Signed by the Mayor on 3/3/09.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal

Pat DuVal, City Recorder

City Attorney

Chapter 13.30 REIMBURSEMENT DISTRICTS

13.30.010 Definitions.

The following terms are definitions for the purposes of this chapter.

A. "city engineer" or "engineer" means the person holding the position of city engineer or any officer or employee designated by that person to perform duties stated within this chapter.

B. "City" means the city of Milwaukie.

C. "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 any representative thereof.

D. "Applicant" means a person, as defined in subsection C of this section, who is required or chooses to finance some or all of the cost of a street, water, storm sewer or sanitary 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. The "applicant" may be the city.

E. "Street improvement" means a street or street improvement conforming with standards in the Milwaukie Community Development Code 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.

F. "Water improvement" means a water or water line improvement conforming with standards in the Milwaukie Community Development Code and including but not limited to extending a water line to an intervening property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the main line.

G. "Sanitary sewer improvement" means a sanitary sewer or sanitary sewer line improvement conforming with standards in the Milwaukie Community Development Code and including but not limited to extending a sewer line to an intervening property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the main line.

H. "Storm sewer improvement" means a storm sewer line improvement conforming to standards in the Milwaukie Community Development Code and including but not limited to extending a storm sewer line to an intervening property.

I. "Public improvement" means any construction, reconstruction or upgrading of a water, sanitary sewer or storm sewer line, public street (including bicycle lanes) or sidewalk or undergrounding of public utilities.

J. "Front footage" means the linear footage of a lot or parcel owned by an intervening property owner which is served by a reimbursement district public improvement and on which the intervening property owner's portion of the reimbursement may be calculated. Front footage shall be the amount shown on the most recent county tax assessor maps for the intervening property or, in the event such information is not available, any other reasonable method established by the city engineer for calculating front footage. "Front footage" does not include property owned by the city, including rights-of-way.

K. "Reimbursement agreement" means the agreement between an applicant 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.

L. "Reimbursement district" means the area which is determined by the city council to derive a benefit from the construction of street, water, storm sewer or sanitary sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

M. "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 applicant for financing the construction of a street, water, storm or sanitary sewer improvement within the reimbursement district.

N. "Utilize" means to make a physical change to property requiring a building permit or development permit which results in the connection of the property to a public improvement or increased use of the public improvement by activity on the property.

O. "Intervening property" is property that utilizes public improvements provided by the applicant. (Ord. 1868 § 1 (part), 2000)

13.30.020 Application for a reimbursement district.

A. Any person who is required to or chooses to finance some or all of the cost of a street, water, storm sewer or sanitary sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the city engineer, request that the city establish a reimbursement district. The street, water, storm sewer and sanitary sewer improvements must include improvements of a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval or 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, storm or sewer lines. The city may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review and notice pursuant to this chapter.

B. The application shall include the following:

1. A description of the location, type, size and cost of the public improvement to be eligible for reimbursement;

2. 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;

3. Post-construction. The actual cost of the improvements as evidenced by receipts, invoices or other similar documents. Pre-construction: 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;

4. Post-construction: The date the city accepted the public improvements. Pre-construction: The estimated date of completion of the public improvements.

C. The application may be submitted to the city prior to the installation of the public improvement but shall be submitted no later than one hundred eighty days after written acceptance of the street, water, storm or sanitary sewer improvements. However, the city engineer may waive this requirement upon the showing by the applicant of good cause of the delay, that the delay was not created by the applicant, and that the delay was unavoidable due to unanticipated or unforeseen circumstances.

D. Notwithstanding the time limitations stated in subsection C of this section, if a public improvement was accepted by the city prior to (effective date of this chapter), but after January 1, 1997, an application may be submitted not later than (insert date one hundred eighty days after the effective date of the chapter). (Ord. 1868 § 1 (part), 2000)

13.30.030 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 or has financed some or all of the cost of a street, water, storm or sanitary 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 and the public improvements that are the subject of the district.

C. The actual or estimated cost of the street, water, storm or sanitary sewer improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed for each improvement.

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.

E. The amount to be charged for administration of the agreement shall be fixed by the city council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the city at the time the reimbursement agreement is signed.

F. The period of time that the right to reimbursement exists.

G. Whether the street, water, storm sewer and sanitary sewer improvements will or have met city standards. (Ord. 1868 § 1 (part), 2000)

13.30.040 Amount to be reimbursed.

A. 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 percent 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.

B. No reimbursement shall be allowed for financing costs, permits or fees required for construction permits, 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.

C. 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 and formation public hearing stages of an application.

D. 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. (Ord. 1868 § 1 (part), 2000)

13.30.045 Annual fee adjustment.

The city council may grant an annual fee adjustment at the time of application for formation of a reimbursement district as provided in this section.

A. 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 be fixed and computed against the reimbursement fee as simple interest and will not compound. The amount of the fee adjustment shall be determined that the time that a district is formed and shall be the same each year.

B. Each fiscal year, the finance director shall 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. (Ord. 1868 § 1 (part), 2000)

13.30.050 Public hearing.

A. Within a reasonable time after the city engineer has completed the report required in Section 13.30.030, 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. 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 informational public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

B. If a reimbursement district is formed prior to construction of the improvement(s), a second informational public hearing shall be held after the improvement has been accepted by the city. At that time, the city council may modify the resolution to reflect the actual cost of the improvement(s). (Ord. 1868 § 1 (part), 2000)

13.30.060 Notice of public hearing.

Not less than ten nor more than thirty days prior to any informational public hearing held pursuant to this chapter, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than thirteen 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. (Ord. 1868 § 1 (part), 2000)

13.30.070 City council action.

A. After the informational public hearing held pursuant to Section 13.30.050A, 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, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving city permits applicable to development of that parcel as provided for in Section 13.30.110.

B. 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 improvements being accepted by the city. The agreement, at a minimum, shall contain 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 city council;

5. The applicant shall guarantee the public improvement(s) for a period of twelve months after the date of installation;

6. The applicant shall defend, indemnify and hold harmless the city, its officers and employees, from any and all losses, claims, damage, judgments or other costs or expense, including attorney's fees, arising as a result of or related to the city's establishment of the district and shall waive all claims against the city related to the establishment or administration of the district;

7. The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners;

8. Other provisions as the city council determines necessary and proper to carry out the provisions of this chapter.

C. 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. 1868 § 1 (part), 2000)

13.30.080 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. (Ord. 1868 § 1 (part), 2000)

13.30.090 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. The recorder shall also cause notice to be filed of a council decision made pursuant to Section 13.30.110F. to extend the period of time within which reimbursement payments are due. 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. 1868 § 1 (part), 2000)

13.30.100 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 days following the adoption of a resolution establishing a reimbursement district. (Ord. 1868 § 1 (part), 2000)

13.30.110 Obligation to pay reimbursement fee.

A. The applicant for a permit related to property within any reimbursement district shall pay to the city, in addition to any other applicable fees and charges, the reimbursement fee established by the city council, together with the annual fee adjustment, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the city to connect to the public improvement that is the subject of the district or otherwise increase the use of the public improvement.

B. "Increase the use" means:

1. For sanitary sewer or storm sewer lines: to make a physical change requiring a building or development permit on the intervening property which increases the volume discharged into the line;

2. For water lines: to make a physical change requiring a building or development permit on the intervening property which increases the amount of water used;

3. For public streets: to make a physical change requiring a building or development permit on the intervening property which increases the trips on the street or creates a new entrance onto the street.

C. 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, annual fee adjustment, or portion thereof as a result of this determination.

D. 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. Nothing in this ordinance is intended to modify or limit the authority of the city to provide or require access management.

E. 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 Section 13.30.110A unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. Where approval is given as specified in section 13.30.110A, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

F. The date when the right of reimbursement ends shall not extend beyond five years from the district formation date. Upon application for an extension by the applicant, the city council may, by resolution, authorize up to two five-year extensions of the right of reimbursement under the agreement.

G. The reimbursement fee is immediately due and payable to the city by intervening property owners upon utilization of a public improvement. 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. No city permit of any kind for the intervening property shall be issued until the reimbursement fee is paid in full.

H. 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 intervening property on which the reimbursement is due, the date upon which the reimbursement was due and the intervening 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 intervening 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 accepts or modifies 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 accepts or modifies the city manager's report and determines that the reimbursement fee 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 fee shall prohibit any issuance of permits by the city for the intervening property. (Ord. 1868 § 1 (part), 2000)

13.30.120 Public improvements.

Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the city. (Ord. 1868 § 1 (part), 2000)

13.30.130 Multiple public improvements.

More than one public improvement may be the subject of a reimbursement district. (Ord. 1868 § 1 (part), 2000)

13.30.140 Collection and payment—Other fees and charges.

A. Applicants shall receive all reimbursement collected by the city for their public improvements. Such reimbursement shall be delivered to the applicant for as long as the reimbursement district agreement is in effect. Such payments shall be made by the city within ninety days of receipt of the reimbursements.

B. The reimbursement fee is in lieu of a local improvement district charge for the improvements installed pursuant to the reimbursement district agreement. The reimbursement fee is not intended to replace or limit any other fee or charge collected by the city. (Ord. 1896 § 1, 2002; Ord. 1868 § 1 (part), 2000)