

CHAPTER 35

REIMBURSEMENT DISTRICTS FOR PUBLIC ROAD IMPROVEMENTS

35.005 Purpose.

(1) The purpose of this chapter is to provide a process in which properties that benefit from the construction of road improvements by others, will share in the cost of those improvements through payment of a Reimbursement Fee. This fee will not be due and payable until a development activity is approved that would otherwise require road improvements per the County Code (primarily within Chapter 99, General Development Standards). Properties that are fully developed will not be assessed a reimbursement fee. This chapter provides a process for the County to examine the road improvements which are constructed, their cost, properties which are specially benefited by them, and will provide a reasonable method of apportioning the reimbursable costs among benefited properties.

(2) Benton County requires developers to construct all road improvements necessary to serve proposed developments. These improvements are constructed in accordance with County construction standards and may be later accepted as “public improvements.” [Ord. 2011-0238]

35.010 Definitions. As used in BCC Chapter 35, unless the context requires otherwise:

(1) “**Applicant**” means the person, entity, or authorized agent filing an application for a Reimbursement District who will be making road improvements beyond what is required under the applicable development code.

(2) “**Board**” means the Benton County Board of Commissioners.

(3) “**County Engineer**” means the person holding the position of County Engineer within the Public Works Department or his or her designee.

(4) “**County**” means Benton County.

(5) “**Developer**” means any person, including a governmental agency, undertaking any development.

(6) “**Development, develop, or re-develop**” means making a change in the use of a structure or land or dividing land into two or more parcels which would require permits and whose increased impact would require road improvements under the applicable development code. Examples include but are not limited to, dividing property, construction of a new home, change of use that increases traffic.

(7) “**Parcel**” means a single unit of land conforming with all land development regulations in effect on the date the parcel was created. A unit of land legally created prior to partition ordinances and recognized as a distinct unit of land by the County pursuant to ORS 92.017.

(8) “**Person**” means any individual, firm, partnership, unincorporated association, public or private corporation, limited liability company, government, governmental entity or other lawful entity.

(9) “**Property owner**” means the owner of the title to real property or the contract purchaser of real property of record as shown on the most recent assessment roll in the office of the County Assessor.

(10) “**Special benefit**” means value associated with a capital improvement which relates to a particular parcel of land to the extent such parcel is, or may be, partially relieved of a cost or expense associated with development.

(11) “**Road**” means the entire right-of-way of any public way that provides access for persons to property.

(12) “**Road improvement**” means a road, street, or associated improvement or portion thereof within a public right of way which is constructed in accordance with County standards or urban standards in the City limits or Urban Growth Boundary (UGB) and which provides a special benefit to more than a single parcel of real property including but not limited to some or all of the following: roads, curb and gutters, storm drains, water quality facilities, water quantity facilities, street trees or landscaping, sidewalks, bikeways, and traffic control devices.

(13) “**Reimbursement District**” means the area which is determined by the County Board of Commissioners to derive a benefit from the construction of road improvements, financed in whole or in part by the applicant and includes property which can be developed or re-developed and is required to provide such an improvement when it is approved for development.

(14) “**Reimbursement Fee**” means the fee required to be paid by an Order of the County Board of Commissioners. The County Board of Commissioners Order 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 road improvement within the Reimbursement District that benefits other developable property.

(15) “**Total project cost**” means all costs of right-of-way acquisition, materials, labor, contractual fees, construction, engineering fees, administrative fees, and other actual expenses of the road improvement. [Ord. 2011-0238]

35.015 Application for a Reimbursement District.

(1) Any person or entity, including a government agency, who is required to or chooses to finance some or all of the cost of a road improvement may, by written application filed with the County, request that the County establish a Reimbursement District. To qualify for reimbursement, improvements must:

(a) Be available to provide service to potential developments on property not controlled by the applicant; and

(b) Meet Development Code standards; and

(c) Exceed those road improvements typically required for the subject development. Examples include, but are not limited to, full street improvements instead of half street improvements, and/or connection of street sections for continuity.

(2) The application shall include the following:

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

(b) A map showing the properties to be included in the proposed Reimbursement District with the benefited parcels identified by tax lot; the zoning for the properties; the frontage 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) Accompanied by an application fee, as established by Order, sufficient to cover the cost of administrative review and notice pursuant to this section; and

i. Preconstruction: the estimated cost of the road improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the County Engineer and the estimated date of completion of the road improvements, or

ii. Post construction: the actual cost of the road improvements as evidenced by receipts, invoices or other similar documents, may not to exceed the prevailing market rates for a similar project as determined by the County Engineer and, if applicable, the date the County accepted the public improvements.

(3) Application for formation of a Reimbursement District shall be made no later than twelve (12) months after completion and acceptance of the road improvements by the County Engineer. The County Engineer may, however, waive this requirement upon a showing by the applicant of good cause for the delay, that the delay was not created by the applicant, or that the delay was unavoidable due to unanticipated or unforeseen circumstances. However, in no event shall an application be accepted twenty-four (24) months after completion and acceptance of the road improvements. [Ord. 2011-0238]

35.020 Reimbursement Fee.

(1) The Reimbursement Fees established under this chapter are intended to become due and payable at the time of permit approval for connection or initiation of development activity that would otherwise require road improvements under the County Development Code. Such charges are fees for service because they contemplate a development's receipt of essential County services based on the nature of the development. The timing and extent of any development are within the control and discretion of the developer. Furthermore, the Reimbursement Fees imposed by this chapter are not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI, of the Oregon Constitution or the legislation implementing that section.

(2) The Reimbursement Fees established hereby are in addition to, and not in-lieu-of, other charges which may be required of developers, including building permit fees, inspection fees, and any other development-related charges. [Ord. 2011-0238]

35.025 County Engineer Report. The County Engineer shall review the application for the establishment of a Reimbursement District and evaluate whether a district should be established. The County Engineer may request the submittal of other relevant information from the applicant in order to assist in the evaluation. The County Engineer shall prepare a written report for the Board of Commissioners, with input from appropriate Public Works advisory committee(s), outlining recommendations concerning the following factors:

- (1) Whether the applicant will finance or has financed some or all of the cost of the road improvement making services available to property, other than property owned by the applicant;
- (2) The area to be included in the Reimbursement District identified by tax lot number(s);
- (3) The actual or estimated cost of the road improvements within the area of the proposed Reimbursement District as outlined in 35.030(1), the applicants share of the costs, and the portion of the cost for which the applicant should be reimbursed;
- (4) A methodology for spreading the cost among the parcels within the Reimbursement District. The methodology should include:
 - (a) Consideration of the cost of the improvements;
 - (b) Prior contributions by property owners;
 - (c) Rate-making principles employed to finance road improvements; and
 - (d) Any other factors deemed relevant by the County Engineer;
- (5) Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location. [Ord. 2011-0238]

35.030 Amount to be Reimbursed.

- (1) The cost to be reimbursed to the applicant shall be costs of right-of-way acquisitions, materials, labor, contractual fees, construction, engineering fees, administrative fees and other actual expenses as determined by the Board of Commissioners.
- (2) A Reimbursement Fee shall be computed by the County for all properties which have the opportunity to develop and utilize the improvements, including the property of the applicant. The applicant shall not be reimbursed for their portion of the Reimbursement Fee computed for their property.. No reimbursement shall be allowed for the cost or value of real property which the applicant was required to dedicate or reserve for public use as a condition of development. [Ord. 2011-0238]

35.035 Action on the Application for Reimbursement District. Within 60 days after the County Engineer has completed the report required in Section 35.025, the Board of Commissioners shall hold a public hearing in which property owners subject to the Reimbursement Fee will be given the opportunity to comment on the proposed Reimbursement District. The notice shall be sent by certified mail at least ten (10) days prior to the date of the public hearing and will be sent to affected property owners at addresses on the latest County assessment roll.

The notice for the hearing shall contain at least the following:

- (1) A statement that an application for a Reimbursement District has been submitted to the County with the name of the applicant;
- (2) A general description of the improvement and the estimated costs for which a Reimbursement District is sought;
- (3) The proposed formula used to apportion the sum to be recovered from the property;
- (4) The time and place for the Board of Commissioners to consider oral and written testimony regarding the proposed Reimbursement District and costs to be recovered;
- (5) Information stating that the failure of the owner to object in writing will be treated as a waiver of objection to the establishment of the proposed Reimbursement Fee or Reimbursement District. [Ord. 2011-0238]

35.040 Board Action on the Application.

- (1) After the public hearing is held, the Board of Commissioners shall approve, reject or modify the recommendations contained in the County Engineer's Report. The Board of Commissioners' decision shall be embodied in a Board Order. If a Reimbursement District is established, the Order shall include:
 - (a) The County Engineer's Report as approved or modified; and
 - (b) The amount of the Reimbursement Fee for each parcel; and
 - (c) A statement that payment of the Fee is a precondition to receiving County permits applicable to the development of the affected parcel; and
 - (d) A statement that the improvement has been completed in accordance with County standards; and
 - (e) That the maximum time it shall be in effect is no greater than 15 years unless a one time 5-year extension is requested by the applicant.
- (2) The formation of the Reimbursement District does not result in an assessment against property or a lien against property, accordingly, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances (i.e. objection).

(3) If a Reimbursement District is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the County. At that time, the Board of Commissioners may modify the Order to reflect the actual cost of the improvement(s).

(4) The County shall notify the applicant and all property owners by certified mail within the Reimbursement District of a decision to create a Reimbursement District. The notice shall include a copy of the Order, the date it was adopted, and a short explanation of when the property owner is obligated to pay the Reimbursement Fee, the amount of the fee and rights to appeal. [Ord. 2011-0238]

35.045 Recording the Order. Notice of the formation and nature of the Reimbursement District shall be recorded in the Office of County Records to provide notice to potential purchasers of property within the district. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the Order or the obligation to pay the Reimbursement Fee. If any of the affected property lies within the limits of a city, the County shall provide notice to the city of the formation of the district as well as a copy of the Order for its records. [Ord. 2011-0238]

35.050 Contesting the Reimbursement District.

(1) A person, who is adversely affected by a final determination of the Board of Commissioners, may obtain judicial review of that decision under ORS 34.010 to 34.100. A decision by the Board of Commissioners under this ordinance is not a land use decision.

(2) A person is adversely affected if the person:

(a) Is an owner of property within the proposed Reimbursement District; or

(b) Is the applicant, or

(c) Is a person who submitted written evidence, arguments or comments into the record of the Board of Commissioners' public hearing.

(3) Judicial review of a final determination is:

(a) Limited to the evidence in the record at the time of the final determination; and

(b) Available only for issues raised before the Board of Commissioners with sufficient specificity to afford it an opportunity to respond. [Ord. 2011-0238]

35.055 Severability.

(1) Nothing contained herein shall be construed as limiting the authority of the County to levy an assessment or assessments for road improvement charges, where a court of competent jurisdiction determines the agreements entered into pursuant to such Chapters are unenforceable.

(2) In the event a Reimbursement District expires or is invalidated by future Benton County Code provisions, owners of property within a Reimbursement District may petition the County Engineer to cause a document to be recorded with the Benton County Recorder's Office which verifies the dissolution of the Reimbursement District. [Ord. 2011-0238]

35.060 Obligation to Pay Reimbursement Fee.

(1) At the time of payment, the Reimbursement Fee shall be adjusted to reflect the Engineering News Record Construction Cost Index multiplier but in no case shall the adjusted Reimbursement Fee exceed the value of providing the improvement(s) if the Reimbursement District were not in place.

(a) The County shall not issue a permit for any development activity until any applicable Reimbursement Fees has been paid in full or until provision for installment payments has been made and approved.

(2) The owner of a property within the Reimbursement District shall pay the required fee if, within the time specified in the order, the property owner applies for (or causes application to be made for) and receives approval from the County or a city for any of the following:

(a) A permit for connection to a road improvement inside city limits for which a Reimbursement District has been established; or

(b) Issuance of a permit for any development activity for which the Benton County Code would require connection to or construction of transportation facilities for which the Reimbursement District has been established.

(2) Failure on the part of the County to collect the Reimbursement Fee at the time the property owner applies for permits or applications for development will not relieve the property owner of the obligation. Should an error or omission be discovered, payment of the Reimbursement District charges will be due upon notification by the County.

(3) The right to reimbursement under this chapter may be assigned or transferred by the person upon whose request the Reimbursement District was established upon written notice to the County.

(4) Upon receipt of a Reimbursement Fee or portion thereof, the County shall cause a record to be made of the property for which such payment is received. Payment of the Reimbursement Fee shall be in the form of a cashier's check or other acceptable form made payable to the County. The County will then process and submit a payment to the person upon whose request the Reimbursement District was established or that person's assignee.

(5) The owner of property subject to a Reimbursement Fee may apply for apportionment of the Reimbursement Fee in accordance with County's procedures applicable in the case of apportionment of special assessments.

- (6) The County shall not issue a permit for any development activity until any applicable Reimbursement Fees has been paid in full or until provision for installment payments has been made and approved.
- (7) If development is commenced without an appropriate permit, the Reimbursement Fee is immediately due and payable.
- (8) Except as otherwise expressly provided, neither the County nor any officer or employee of the County acting in an official capacity, shall be liable for payment of any Reimbursement Fee. The County's general fund or other revenue sources shall not be liable for outstanding and unpaid Reimbursement Fees imposed on private property.
- (9) It is the responsibility of the person upon whose request the Reimbursement District was established to provide the County Engineer or their designee with current contact information including phone number and mailing address.
- (10) Any unclaimed fees collected by the County will revert to the road fund after a period of two (2) years for the maintenance of the facility for which it was collected. [Ord. 2011-0238]