

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Adding Beaverton Code Chapter 3.03, Reimbursement Districts, Relating to the Procedures to Create and Administer Reimbursement Districts

FOR AGENDA OF: 01-17-23 **BILL NO:** _____

CITY MANAGER’S APPROVAL: _____

DEPARTMENT OF ORIGIN: CDD _____

DATE SUBMITTED: 01-03-23

CLEARANCES: City Attorney _____
Finance _____
Planning _____
Public Works _____
Engineering _____

PROCEEDING: PUBLIC HEARING
o Ordinance

EXHIBITS: 1. Ordinance
A. Beaverton Code
Proposed Chapter 3.03
Reimbursement Districts

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

City Council conducts a public hearing regarding the adoption of An Ordinance Adding Beaverton Code Chapter 3.03, Reimbursement Districts, Relating to the Procedures to Create and Administer Reimbursement Districts (set forth in Exhibit 1).

At the close of the public hearing the City Council either: (1) moves to adopt the proposed ordinance, or (2) specifies future actions to be taken regarding the proposed ordinance.

ISSUE STATEMENT SUMMARY:

The Beaverton Code currently lacks language that would allow the City Council to approve reimbursement districts so that property owners can share infrastructure costs.

Without this tool, often one developer must pay for the entire cost of an infrastructure project that benefits multiple property owners that will use that infrastructure.

The Beaverton Code language in Exhibit 1.A. would allow the city to accept reimbursement district applications and the City Council to decide whether to approve those applications using the steps summarized below:

1. An application is made (by a developer or the city).

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2. City staff, on behalf of the City Manager, prepare a report recommending whether the district should be formed, the area it should cover, the cost of the project, the methodology for distributing the cost among the properties, and other details about how the district will work.
3. Information is shared with the affected property owners and the public.
4. A public hearing is held.
5. The City Council votes on whether to approve the district.
6. The district is recorded with the Washington County Assessment and Taxation Office (but no liens are placed on the properties).
7. When properties that benefit from the improvement begin to use the improvement, they pay the reimbursement fee to the city, and the city forwards the fee to the party that built the improvement.

Other important elements in the code found in Exhibit 1.A.:

- The city can establish an application fee to cover the costs of notices and the city manager’s report. This fee will be established by a separate Council resolution.
- Eligible projects are public improvements, which are defined as “any construction, reconstruction, or upgrading of public sanitary sewer, stormwater, street, water (potable or non-potable), park, trail, or other improvements, including private utility undergrounding in the public right of way.”
- Reimbursement districts would last 10 years, but the City Council can approve up to two five-year extensions for a maximum possible length of 20 years.
- Eligible costs would include engineering, construction, and off-site dedication of right of way (that is engineering, surveying, and inspection costs eligible up to 13.5 percent).
- Non-eligible costs would include legal expenses, financing costs, application fees, permits, fees, developer easements/dedications, SDC-eligible costs, costs already funded by other governments or private parties, or any cost that cannot be clearly documented.
- The city manager’s report will include the amount the city will charge for an administration fee, established by Council in the reimbursement district resolution and set either as a percentage of the total reimbursement fee or as a flat fee.

HISTORICAL PERSPECTIVE:

The City Council held work sessions on February 15 and November 15 to provide direction to staff regarding the proposed Beaverton Code provisions in Exhibit 1.A.

Many cities, local governments, and special districts have codes that allow for reimbursement districts, including but not limited to:

- Clean Water Services,
- City of Gresham,
- City of Hillsboro,
- City of Tigard,
- City of Milwaukie,
- City of Bend,
- City of Grants Pass,
- City of Redmond, and
- City of Pendleton.

City staff have noted opportunities in the past where reimbursement districts could have been applied and anticipate the tool will be useful for future development and infrastructure provision, possibly including in Cooper Mountain.

COMMUNITY VISION/COUNCIL PRIORITIES/EQUITY & CLIMATE GOALS:

Community Vision Action Item 46: Strategically widen roads, add signals and turn lanes.

Climate Action Plan No. 58: Seek and advocate for funding sources to support transportation investments.

Council priorities: Infrastructure, including transportation planning and implementation.

FOR MORE INFORMATION:

For questions about the Reimbursement Districts Project, contact Brian Martin, Long Range Planning Manager, Planning Division, Community Development Department, at bmartin@beavertonoregon.gov.

ORDINANCE NO. _____

AN ORDINANCE ADDING BEAVERTON CODE CHAPTER 3.03, REIMBURSEMENT DISTRICTS, RELATING TO THE PROCEDURES TO CREATE AND ADMINISTER REIMBURSEMENT DISTRICTS

WHEREAS, the Beaverton Code does not include provisions that allow reimbursement districts to be formed within the City of Beaverton (“City”); and

WHEREAS, the need for infrastructure cost-sharing among property owners has occurred in the past and is expected to occur in the future within the City; and

WHEREAS, the City Council held two work sessions in 2022 to discuss adding this tool to the Beaverton Code.

Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. New Section. Beaverton Code Chapter 3.03, Reimbursement Districts, is added to read as shown in Exhibit A, which is attached and incorporated by this reference.

Section 2. Severability. The sections and subsections of this ordinance, including Exhibit A, are severable. If any part of this ordinance is held unconstitutional or otherwise invalid by a court of competent jurisdiction, the remaining parts shall remain in full force and effect unless:

- A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or
- B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

Section 3. Effective Date. This ordinance takes effect 30 days after its passage.

First reading this _____ day of _____, 2023.

Public hearing this _____ day of _____, 2023.

Duly passed by the City Council this _____ day of _____, 2023.

Signed by the Mayor the _____ day of _____, 2023.

ATTESTED:

SIGNED:

CATHERINE JANSEN, City Recorder

LACEY BEATY, Mayor



Beaverton Code

Proposed Chapter 3.03 REIMBURSEMENT DISTRICTS

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3.03.010 Definitions.

- A. Developer. 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 property owned by the person.
- B. Development Permit. 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.
- C. Property. A lot or parcel of real property.
- D. Public Improvement. Any construction, reconstruction, or upgrading of public sanitary sewer, stormwater, street, water (potable or non-potable), park, trail, or

other improvements, including private utility undergrounding in the public right of way.

- E. Reimbursement Agreement. An agreement between the developer and the city that is authorized by the council and provides for the installation of, and reimbursement for, the cost of public improvements.
- F. Reimbursement District. The area determined by the council to derive a benefit from the construction of public improvements, financed in whole, or in part, by the developer.
- G. Reimbursement Fee. A fee required to be paid by resolution and by the reimbursement agreement when a person develops property that benefits from the public improvement.
- H. Resolution. A resolution approved by 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).

3.03.015 Local government as developer.

Nothing in this chapter is intended to limit the authority of the city, or any other local government, from serving as a developer and applying to establish a reimbursement district.

3.03.020 Application process.

- A. A developer of a public improvement that will be available to provide service to property other than the person's property may file a written application with the city manager requesting that the city establish a reimbursement district. The public improvement must be greater in capacity than the public improvement generally required for an application for a development permit or must be available to provide service to one or more properties that are not owned by the developer.
- B. The application must be accompanied by an application fee, set by council resolution, that is reasonably calculated to cover the city's cost of preparing the city manager's report and notice pursuant to this chapter.
- C. The application must include the following:
 - 1. A written description of the location, type, and size of each public improvement eligible for reimbursement.
 - 2. Detailed construction drawings or as-built plans showing the actual location, nature, and extent of each public improvement eligible for reimbursement.
 - 3. A map showing the:
 - a. boundaries of the proposed reimbursement district,
 - b. legal boundary of each property in the proposed district, and
 - c. tax lot number and size of each property.

4. A map showing the:
 - a. properties to be included in the proposed reimbursement district,
 - b. zoning designation, frontage width and square footage of each property, or similar data necessary for calculating the apportionment of the cost, and
 - c. properties owned by the developer.
 5. The names and mailing addresses of all property owners in the proposed reimbursement district according to the current real property deed records of the Washington County Department of Assessment and Taxation.
 6. The actual cost as evidenced by bids, invoices, or other evidence satisfactory to the city; estimated cost of each public improvement(s) prepared by an architect, engineer or other licensed professional in accordance with established eligibility criteria and guidelines; or other evidence of actual or estimated cost satisfactory to the city. The developer must certify the accuracy of the cost documents submitted.
 7. The estimated date of completion of the public improvements.
- D. The application may be submitted to the city prior to the construction of the public improvement, but not later than 180 days after completion and acceptance of the public improvements by the city. The 180-day deadline may be extended by the city manager for good cause shown.

3.03.030 City manager's report.

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

- A. An evaluation of whether the developer will finance, or has financed, some or all of the cost of a public improvement that provides a benefit to property not owned by the developer.
- B. The area or properties benefited by the public improvement that are to be included in the reimbursement district.
- C. The actual or estimated cost of the public improvement(s) serving the area of the reimbursement district.
- D. The portion of the public improvement cost appropriate for reimbursement to the developer.
- E. A reasonable formula or methodology for spreading the cost among the properties within the reimbursement district. If appropriate, the city may define a "unit" subject to the reimbursement fee based on whether the property 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 rights of way, utility easements, and open space.

- F. The results of applying the formula or methodology referred to in subsection (E) of this section to the properties identified in subsection (B) of this section to determine the proposed reimbursement fee.
- G. The amount to be charged, and the payment requirements, for the city's administration of the reimbursement district. The administration fee shall be set by the council and included in the resolution approving the reimbursement district.
 - 1. Amount of fee. The administration fee may be a percentage of the total reimbursement fee expressed as an interest figure, or it may be a flat fee per unit to be added to the total reimbursement fee.
 - 2. Payment of fee. The developer must pay the administration fee to the city at the time the reimbursement agreement is executed. If the city is the developer, the administration fee shall be added to reimbursement fee for each property in the reimbursement district, and it shall be paid when the reimbursement fee is due pursuant to BC 3.03.100.
- H. An evaluation of whether the public improvements meet, or exceed, city standards or other applicable standards identified by the city manager.
- I. An evaluation of whether it is fair and in the public interest to create a reimbursement district for the public improvement.
- J. The period of time the reimbursement district shall exist, if the period is less than 10 years.
- K. An assessment of whether the Developer has complied with the requirements of this Chapter.

3.03.040 Amount to be reimbursed.

- A. A reimbursement fee shall be computed by the city for all properties 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 property and each public improvement. The developer is not entitled to reimbursement of the fee that is allocated to the developer's property.
- B. The cost to be reimbursed to the developer is limited to the cost of engineering, construction, and off-site acquisition of right of way. Engineering may include surveying and inspection costs, but it may not exceed 13.5 percent of eligible public improvement construction costs. The developer's reimbursable right-of-way acquisition costs shall be limited to the reasonable market value of property or easements purchased from a third party that are required to complete off-site public improvements.
- C. The developer will not be reimbursed for costs and expenses related to the following:
 - 1. Legal fees,
 - 2. Financing costs,

3. Permits and fees required for construction,
4. Dedications of property or easements by the developer,
5. Costs that are eligible for systems development charge credits,
6. Costs contributed to the public improvement by another public or private entity,
7. Application fees required under BC 3.03.020, or
8. Any cost that cannot be clearly documented.

3.03.050 Public hearing.

- A. Within 45 days after the city manager has completed the report required in BC 3.03.030, 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 public improvement for consideration and properties proposed for inclusion in the reimbursement district. The public hearing is for informational purposes only; the reimbursement district is not subject to mandatory termination because of objections to its formation. The council has the sole discretion after the public hearing to decide whether to approve forming the reimbursement district.
- B. At least 10 days before the public hearing, the developer and all property owners in the proposed reimbursement district shall be notified by the city of the public hearing and its purpose. Notice shall be accomplished by regular mail. 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 validity of the reimbursement district resolution or the council's authority.

3.03.060 Council action.

- A. After the public hearing held pursuant to BC 3.03.050, the council shall approve, reject or modify the recommendations contained in the city manager's report. The council's decision shall be set forth in a resolution. If a reimbursement district is approved, the resolution shall include the city manager's report as approved or modified, and specify that payment of the reimbursement fee for each property in the reimbursement district is a precondition of receiving any city development permits, building permits or other permits necessary to develop the property as provided for in BC 3.03.100.
- B. The resolution shall establish an interest rate to be applied to the reimbursement fee as a return on the investment for the developer. The interest rate shall be fixed and computed against the reimbursement fee as simple interest and will not compound.
- C. The resolution shall instruct the city manager to enter into an agreement with the developer regarding the public improvement(s), unless the developer is the

city. If the reimbursement agreement is entered into prior to construction, the reimbursement agreement shall be contingent upon the improvements being accepted by the city. The agreement shall include at least the following:

1. The public improvement(s) shall meet all applicable city regulations and standards.
 2. The total amount that may be reimbursed to the developer.
 3. The total amount of reimbursement shall not exceed the developer's actual cost of the public improvement(s), subject to the limitation of BC 3.03.040(B).
 4. The developer must guarantee the public improvement(s) for the city's required maintenance period, which begins after the date of the city's acceptance.
 5. 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 BC 3.03.100(J). The developer shall acknowledge that the City is not obligated to collect the reimbursement fee from affected property owners, and that the developer assumes all risk of every kind that the amount reimbursed may not be as much as anticipated, or that any particular reimbursement fee may not be collected by the city. The applicant has a private cause of action for collection of a reimbursement fee against any person obligated to pay a reimbursement fee, and the applicant shall bear the entire cost of an action to collect the reimbursement fee, without any right to contribution by the City.
 6. A clause in a form acceptable to the city attorney stating that the developer agrees the city is not liable for any of the developer's alleged damages, including all costs and attorney fees, under the reimbursement 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 of inverse condemnation, because the developer has benefited by the city's approval of its development and the required improvements.
 7. Other provisions the city determines necessary and proper to carry out the provisions of this chapter.
- D. 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.

3.03.070 Notice of council decision.

The city shall notify, by regular mail, the developer and all property owners in the reimbursement district of the council's decision to adopt or reject the reimbursement district. If the council approves the district, the notice shall specify

how to access or obtain a copy of the resolution, the date it was adopted, and a short description specifying the amount of the reimbursement fee and that the property owner is legally obligated to pay the fee pursuant to this chapter.

3.03.080 Recording of resolution.

The city recorder shall cause notice of reimbursement district formation to be recorded in the office of the Washington County clerk to provide notice to a potential purchaser of property within the reimbursement district. Recording the notice with the clerk shall not create a lien. Failure to record shall not affect the legality of the resolution or the obligation of a current or future property owner to pay the reimbursement fee.

3.03.090 Contesting the reimbursement district.

Legal action to contest formation of the reimbursement district or the reimbursement fee, including the amount of the fee for any property, must be filed within 60 days following the date the resolution forming the reimbursement district is adopted. Any such legal action shall be exclusively by Writ of Review pursuant to ORS 34.010 to ORS 34.100.

3.03.100 Obligation to pay reimbursement fee.

A. Duration of reimbursement district.

1. Duration. The obligation to pay the reimbursement fee continues as long as the reimbursement district remains in effect. A reimbursement district established under this chapter shall remain in full force and effect for a period of 10 years from the date of the resolution approving district formation, unless the resolution creating the reimbursement district specifies a shorter time period, or extensions are granted under this Section 3.03.100.
2. Extensions. A reimbursement district may be extended for two (2) additional five-year periods at the council's discretion, for a total of ten (10) additional years. The developer may file a written extension application requesting that the reimbursement district remain in effect for an additional period.
3. Extension application. The application shall describe:
 - a. the remaining useful life of the public improvement(s),
 - b. the continuing benefit to reimbursement district properties, and
 - c. explain why there is good cause for the extension.
4. Extension process.
 - a. The city must provide notice of the public hearing for the requested extension in accordance with BC 3.03.050(B).
 - b. The council must hold a public hearing for the extension request at least ten (10) days after the public hearing notice is mailed.

- c. After the public hearing the council may, by resolution, approve the extension for up to five additional years if it finds that: 1) the developer demonstrated good cause for the extension, and 2) the value of the public improvement(s) to the reimbursement district properties remains sufficient to warrant reimbursement.
 - d. If an extension is approved by the council, the city shall provide notice of the council's decision as provided in BC 3.03.070 and file a copy of the resolution with the county clerk as provided in BC 3.03.080.
- B. *Obtaining permits.* An applicant for a city permit listed below 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:
 - 1. A building permit for a new building;
 - 2. Building permit(s) for any addition(s), modification(s), or alteration(s) of a building, which cumulatively exceed twenty-five percent (25%) of the existing square footage in any 36-month period;
 - 3. A development permit as defined in this subchapter;
 - 4. A permit issued for connection to a public improvement.
- C. *Connection to public improvements.* 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 BC 3.03.100. 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 a permit was required.
- D. *Waiver by developer.* A person who is required to pay a reimbursement fee under this section may present to the city a full or partial waiver in lieu of paying all or a portion of the required reimbursement fee. Such waivers shall be on forms provided by the city, signed by the developer, and shall be acknowledged before any notary public within the state. The waiver shall expressly state the amount of the reimbursement fee waived by the developer.
- E. *Previous payment of reimbursement fee.* 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 was previously paid. A permit will not be issued for any of the activities listed in BC 3.03.100(B) unless the reimbursement fee, together with the amount of accrued interest, has been paid in full. If 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.
- F. The city's determination of the person responsible for paying the reimbursement fee and when the fee is due is final.

3.03.110 Remittance to developer.

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 under Section 3.03.100. Only those payments the city receives from, or on behalf of, properties in a reimbursement district shall be remitted 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.

3.03.120 City's authority.

- A. Nothing in this chapter is intended to modify or limit the authority of the city to provide or require access management.
- B. Nothing in this chapter is intended to modify or limit the authority of the city to enforce development conditions that have been or may be imposed against property in the reimbursement district.
- C. Nothing in this chapter is intended to modify or limit the authority of the city to impose development conditions against property in the reimbursement district as it develops.

3.03.130 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.

3.03.140 Multiple public improvements

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

3.03.150 Collection and payment; Other fees and charges

- A. *Payment to developer.* The developer shall receive all reimbursement fees collected by the city pursuant to BC 3.03.100 from persons developing property within the district, subject to BC 3.03.110. The reimbursement fees shall be remitted to the developer for as long as the reimbursement district agreement is in effect. Remittance to the developer shall be made by the city within 90 days of receipt of the reimbursement fee. The city may retain an amount up to one-half of one percent of the fee to cover its administrative costs, unless the resolution creating the reimbursement district specifies a different administration fee.
- B. *Collection.* 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 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 city manager's report. 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.

- C. *Other fees and charges.* 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.

3.03.160 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.

3.03.170 Severability

If any section, phrase, clause, or part of this subchapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.