

**BEND CODE**

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**CHAPTER 2 - LOCAL IMPROVEMENTS****SIDEWALKS, DRIVEWAY APPROACHES AND CURB CUTS**

2.100 Definitions. For the purpose of B.C. 2.100 to 2.162, the following definitions shall apply:

- (1) Apron. The apron is that portion of the driveway approach extending from the property side of the curb to the sidewalk section and lying between the end slopes of the driveway approach.
- (2) Curb return. The curb return is the curved portion of a street curb at street intersections or the curved portion of a curb in the end slopes of a driveway approach.
- (3) Driveway. A driveway is an area on private property where automobiles and other vehicles are operated or allowed to stand.
- (4) Driveway approach. A driveway approach is an area, construction or improvement between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to a definite area of the private property, such as a parking area, a driveway, or a door at least seven feet wide, intended and used for the ingress and egress of vehicles. The component parts of the driveway approach are termed the apron, the end slopes or the curb return, and the sidewalk section.
- (5) End slopes. The end slopes are those portions of the driveway approach which provide a transition from the normal curb and sidewalk elevations to the grade of the apron, either by means of a sloping surface or by means of a curb return together with the area between the projected tangents of the curb return.
- (6) Property Owner. The owner of the property adjacent to the sidewalk area.
- (7) Sidewalk. That portion of the sidewalk area intended for the use of pedestrians and improved by surfacing, including the curb if the sidewalk abuts the curb.
- (8) Sidewalk Area. The area on the side of a street between the lateral line of the street and the adjacent property line.
- (9) Sidewalk Section. The sidewalk section is that portion of the driveway approach lying between the back, or property edge of the sidewalk, and the apron plus the end slopes measured at the front, or street, edge of the sidewalk.

2.102 Maintenance of Sidewalks. All property owners shall maintain sidewalks and driveway approaches within sidewalk areas adjacent to their property in good repair. If any sidewalk or driveway approach is not maintained in good repair, the City may utilize the procedure provided in B.C. 2.150 - 2.162 to effect repair of the sidewalk or driveway approach.

2.104 Liability for Injuries. The property owner is responsible for constructing, maintaining and removing obstructions from a sidewalk or driveway approach located in a sidewalk area adjacent to the owner's property and shall be liable for all personal injury or property damage arising from the property owner's fault or negligence in failing to keep clear, maintain or to properly construct a sidewalk. If the City is required to pay damages for an injury to persons or property caused by the failure to perform a duty which this section imposes, the property owner failing to perform the duty shall compensate the City for the full amount of the damages paid and all City legal fees incurred in defense of such a claim. The City may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

2.106 Permit Required. No person, firm or corporation shall remove, alter, or construct any curb, sidewalk, driveway approach, gutter, pavement, or other improvement in any public street, alley or other property owned by or dedicated to or used by this city and over which it has jurisdiction to regulate the matters covered hereby, without first filing an application and obtaining a permit from the City's Development Services Department. The applicant shall also submit two copies of a drawing showing the location and size of all such proposed improvements with the permit application.

2.108 Permit Fee. The applicant for a permit shall pay the fee established by the City Council pursuant to B.C. 1.800 - 1.806 when filing the application for a permit.

2.110 Review of Application. The City Development Services Department shall review the permit application and shall issue a permit if the proposed improvement is in conformance with this Code and City sidewalk, curb and driveway approach standards, as established by the City Engineer.

2.112 City Construction Standards. All sidewalks and driveway approaches constructed within the sidewalk area in the City of Bend shall be constructed in accordance with City sidewalk and driveway approach standards. City sidewalk standards shall be established by the City. City driveway approach standards are set forth in B.C. 2.114 to 2.222, below.

2.114 Prohibited Locations.

- (1) No driveway approach or sidewalk shall be permitted to encompass any municipal or other public utility facilities. Under the permit provided for herein, applicant may be authorized by the City to relocate any such utility, including any utility within the limits of a curb return which may be encroached upon as allowed under subsections (3) and (4) of this section, upon application to the subject utility provider and upon making suitable arrangements for financial reimbursement to said utility provider.
- (2) At street intersections no portion of any driveway approach, including end slopes, shall be permitted between the limits of the intersection of the prolonged property lines and the curb, except as may be allowed under subsections (3) and (4) of this section.
- (3) At street intersections no portion of any driveway approach, including end slopes, shall be permitted between the limits of the intersection of the prolonged back edges of the sidewalks and the curb, except as may be allowed under subsection (4) of this section.

- (4) On all curb returns at street intersections where the radius is 25 feet or more, driveway approaches, including end slopes, may encroach upon each end of the return for a distance equal to 12½ percent of the total length of the arc of the curb return, thus leaving at least 75 percent of the length of the arc of the curb return face free from driveway encroachment.
- (5) Notwithstanding the provisions of subsections (2) and (3) of this section, at street intersections no portion of any driveway approach, including end slopes, shall be permitted between the points of curvature of the curb return where the radius of the curve is 20 feet or less.

2.116 Length of Driveway Approach Apron. The width of driveway approach aprons shall not exceed the following dimensions:

- (1) For residential driveways, 14 feet for single driveways, 20 feet for double driveways, and 35 feet for triple driveways; not more than one driveway approach shall be permitted per lot when said lot is 50 feet or less in width fronting on any street or avenue.
  - (a) An additional driveway approach will be allowed when any particular lot has 65 feet or more of frontage on any street or avenue.
  - (b) Sidelines of lots may also have driveway approaches in conformity with the provisions of this subsection, notwithstanding that said lots have driveway approaches on their frontage area.
- (2) For commercial driveways, no single apron shall exceed 35 feet in width. When a commercial establishment controls 50 feet or more of street frontage the number of driveway aprons shall be limited to two for the first 100 feet or part thereof and not more than 35 percent of the frontage exceeding the initial 100 feet thereafter. A safety island of not less than 16 feet of full height curb shall in all cases be provided between driveway approaches serving any one property frontage.
- (3) Property frontage referred to herein includes approach areas directly in front of property owned or under the control of the applicant, and such area as may be directly in front of adjoining property which is used for approach purposes by right of easement or agreement with the adjoining property owner.
- (4) The provisions of this code section shall not supersede the City's arterial access policy.

[Section 2.116 amended by Ord. No. NS-1823, passed February 20, 2002]

2.118 Construction Details.

- (1) All driveway approaches between the curblines and the property line shall be constructed of Portland Cement concrete proportioned to the satisfaction of the City, except as provided in B.C. 2.122. The concrete of the driveway approach, including the sidewalk section, shall be at least four inches thick for residential approaches and at least six inches thick for commercial approaches.

- (2) The sidewalk section of the driveway approach shall be finished and scored as specified by the City for typical sidewalk construction. Apron and end slope areas of the driveway approach shall be finished, after troweling smooth and scoring, with a fiber push broom drawn over the surface parallel to the curbline.

2.120 Driveway Approaches Near Alleys. Driveway approaches located within five feet of the existing curb return at an alley intersection may be merged with the alley intersection pavement, thus requiring the removal of the existing curb return; the total apron length plus the alley width, measured at the curbline of the apron to the opposite alley line, shall not exceed 40 feet, except when there is a driveway approach on both sides of an alley, then the maximum apron length plus alley width shall not exceed 60 feet.

2.122 Areas of Limited Street Improvements.

- (1) Where standard gutters and curbs have been installed but concrete sidewalks have not been, the permit may authorize the applicant to construct the driveway approach from the curbline to the applicant's premises of the same materials as those used for paving applicant's premises, or of any other material satisfactory to the City. Such driveway approach shall be constructed to establish grade and shall be adequate and suitable for the traffic to be carried by it. The permit shall provide and the applicant shall agree that if and when thereafter concrete sidewalks are constructed the applicant or his successor shall install concrete driveway approaches.
- (2) Where standard gutters and curbs have not been installed, the apron widths set forth in Bend Code 2.210 shall be measured along the property line and there shall be not less than 16 feet of frontage between driveway approaches serving any one property. Permits shall not be issued for any surface improvement or paving on the street right-of-way between driveway approaches unless a concrete curb or other physical obstruction, of a design satisfactory to the City, is constructed and maintained by the applicant along his property line, so that the entrance and exit of vehicles to and from the applicant's property will be restricted to the established driveway approaches. Pursuant to the permit provided for herein, applicant may surface the driveway approaches or other areas within the right-of-way by extending the same type of paving used on the applicant's premises so that it merges with the street pavement, provided applicant's paving is adequate and suitable for the traffic to be carried; such extended paving between the property line and the street pavement shall be to establish grade or other slope fixed by the City to provide for proper runoff. Such paving between the property line and the street pavement may meet the street pavement at a point ahead of the curb opening in order to provide for safe deceleration of vehicles turning into the applicant's premises. If applicant's paving is extended beyond the property line into a street right-of-way at an intersection or crossroad, the City may require applicant to construct a suitable traffic island or curb to provide for the protection of such municipal facilities as may be necessary.

2.124 Public Property. City street rights-of-way may not be used for private or commercial purposes. A permit for the construction of driveway approaches shall not be issued unless vehicles to be served or serviced can be parked entirely within the private property lines.

2.126 Unusual Conditions. The City is hereby authorized to grant, in writing, variances from the regulations and requirements of B.C. 2.112 to 2.222, provided it is first determined that the following conditions are present:

- (1) The variance requested arises from peculiar physical conditions not ordinarily existing in similar districts in the City, or is due to the nature of the business or operation upon the applicant's property;
- (2) That the variance requested is not against the public interest, particularly safety, convenience, and general welfare;
- (3) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or tenants; and
- (4) That the terms of this B.C. 2.112 to 2.222 will work unnecessary hardship upon the applicant, property owner, or tenant.

### **COUNCIL ORDERED SIDEWALK AND DRIVEWAY APPROACHES**

2.150 Notice of Required Improvements. Whenever the Council shall consider it necessary to construct, alter, repair, or remove any sidewalk, curb or driveway approach within the City of Bend, the Council shall cause the City to notify, by registered mail, the record owner as shown by the latest record in the office of the tax collector of Deschutes County, Oregon, of all real estate abutting upon said proposed construction, alteration, repairing, or removal, to proceed with such improvement within 30 days, or, in the case of removal, within 10 days, from the date of receipt of such notice, as shown by the returned registry receipt, and if he fails so to do, that the City will cause such improvement to be made and the cost thereof assessed upon such abutting real estate; provided, that if the name or address of the abutting owner cannot be found upon the tax rolls of Deschutes County, Oregon, a copy of said notice shall be posted in a conspicuous place upon such abutting real estate for the period herein designated, said period of time to run from the date of said posting.

2.152 City Improvements and Bids. Whenever the owner of the abutting real estate shall fail to make required improvements, after service of notice as hereinbefore provided, the City Manager shall require the City to forthwith furnish an estimate of the probable cost of said improvement and, when deemed necessary by said City Manager, plans and specifications thereof, and file the same with the City. The City shall thereupon invite bids of said construction of said proposed improvement and shall give 10 days' notice thereof by publication in a newspaper published in the City of Bend, or by posting notices thereof in three public places in said city not less than 10 days prior to the time of letting such contract.

2.154 Content of Bid Notice. The bid notice shall specify the time and place where said bids shall be considered by the Council and that the Council reserves the right to reject any and all bids; bids on different improvements may be invited in one notice, and contracts for the construction of the same may be included in one memorandum or agreement, the consideration for each being specifically stated. The Council may impose such conditions for the construction of said

improvement as it deems necessary to protect the interests of the City and all interested property holders.

2.156 Determination and Assessment of Improvement Cost. The contract price, the right-of-way, and expense, if any, of condemned land, together with all costs and accrued interest, if any, shall be deemed to be the cost of such sidewalk or curb improvement. The City, taking the cost of said improvement as herein defined, shall apportion the same upon the lot or lots, tract or tracts of land benefited by said improvement, which said apportionment of cost shall be a proposed assessment and shall be filed with the City. The cost of said improvement as herein defined shall be assessed against the lot or tract of land abutting upon said improvement, each lot or tract of land being chargeable with the cost of that portion of said improvement immediately abutting thereon.

2.158 Notice of Assessment. The City shall thereupon cause to be published in a newspaper published in said city a notice, stating that said proposed assessment has been apportioned and is on file in the City and subject to examination, and that any objections to such apportionment that may be made, must be made in writing to the City Council and filed with the City within 10 days from the publication of such notice, and that the same will be heard by the Council before the passage of any resolution assessing the cost of said improvement; provided, however, that the City may include in the same notice, notice of hearing on more than one proposed assessment at the same time and place.

2.160 Council Review of Assessment. After the time specified in said notice has elapsed, the Council shall consider said proposed assessment and the objections made thereto, if any, and shall have the power at its discretion and without further notice to consider, ascertain, and decide whether the amount of said proposed assessment against each lot or tract of land has been assessed by the City in accordance with the provisions of the City's charter, and the assessment against each lot or tract of land shall be reduced or increased by the Council so as to conform with the provisions of the charter, if there be any error in the computation of the City. After the Council shall have ascertained the just apportionment of said cost in accordance with the City charter, it shall declare said assessment by resolution, and direct the City to enter into the docket of city liens a statement thereof, containing:

- (1) A description of each lot or tract of land liable for such improvement.
- (2) The name of the owner or reputed owner thereof, or that the name of the owner is unknown.
- (3) The sum assessed upon said property, and the date of entering the same in the said docket of city liens, but such date need be made but once for all entries made upon the same day.

2.162 Charter Provisions. The subsequent proceedings relating to said assessments shall be as provided in the charter of the City of Bend.

**PENALTIES**

2.190 Penalties. A violation of Bend Code 2.100 - 2.162 is a Class A infraction and is subject to the penalties specified in Bend Code 1.732. Every violator shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any of the provisions of this Code section is committed, continued, or permitted.

**OFF-STREET VEHICLE PARKING FACILITIES**

2.300 Statutory Authority. Bend Code 2.300 - 2.338 is adopted pursuant to the provisions of ORS 223.805 - 223.845, which gives cities the authority to establish, operate, and finance off-street motor vehicle parking facilities. Bend Code 2.300 - 2.338 is also based upon ORS 223.387 to 223.401, which gives cities the authority to make local assessments upon benefited property for off-street motor vehicle parking facilities and requires the City Council to prescribe the procedure to be followed in making local assessments for property specially benefited by an off-street motor vehicle parking facility.

**2.302 Initiation of Proceedings and Report**

- (1) The City of Bend may acquire and/or develop an off-street motor vehicle public parking facility either upon its own motion or upon the petition of the owners of one-half of the area of property which will be specifically benefited by such a project. For purposes of determining the property area to be considered in a petition to initiate such a project, property which is actually used for public parking purposes or for customer (but not employee) parking shall not be included.
- (2) If the proposed off-street motor vehicle parking facility is to be paid for in whole or in part by special assessment according to its benefits, then the City Council may, by motion, direct the City Manager or a committee appointed for the purpose to make a written report for the project and file it with the City. The report may contain, when applicable, the following matters:
  - (a) A map or plat showing the general nature, location, and extent of the proposed off-street motor vehicle parking facility and the land to be assessed for the payment of any part of the cost thereof.
  - (b) General plans and estimates of the work to be done.
  - (c) An estimate of the probable cost of the project, including any legal, administrative, and engineering costs.
  - (d) A recommendation as to the method of assessment to be used and an estimate of the cost to be assessed to each of the specially benefited properties.
  - (e) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the off-street motor vehicle parking facility, with the names of the record owners or contract purchasers.

- (f) A statement of outstanding assessments against each property to be assessed.

2.304 Council Action on Report. After the report is filed with the City, the Council may by motion approve the report; modify the report and approve it as modified; require additional or different information for the project; or it may abandon the project.

2.306 Resolution and Notice of Hearing. (1) If the City Council approves the report, it shall declare its intention to establish an off-street motor vehicle parking facility by resolution. The resolution shall designate the project, provide the manner and method of carrying out the project, and describe the boundaries of the district to be assessed for the project.

- (2) The City shall give notice to record owners of property within the district which is proposed to be assessed for the project by mail at least 15 days before the date set for hearing of objections to the project. Notice shall also be published in a newspaper of general circulation within the City of Bend at least once a week for two consecutive weeks, with the last publication to be published at least 10 days before the date set for the hearing.

- (3) The notice shall recite:

- (a) That the report is on file in the City for public examination.
- (b) That the Council will hold a public hearing on the proposed off-street parking facility on a specified date; that objections to the project will be heard by the Council at the hearing; and that if prior to the hearing there shall be presented to the City written objections by more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of assessed valuation within the proposed assessment area, then the improvement will be abandoned for at least one year.
- (c) A description of the district proposed to be assessed; the total estimated cost of the project; the total estimated cost of the project to be paid for by special assessments; the record owner's description of each property to be assessed; and an estimate of the amount to be assessed against each property within the district.

2.308 Remonstrance, Hearing.

- (1) If prior to the time set for the hearing one-half of the record owners of property proposed to be assessed, based either upon area to be assessed or assessed valuation according to the current records of the Deschutes County Assessor within the area to be assessed, object to the project in writing filed with the City, then the project will be abandoned for at least one year.
- (2) If less than one-half of the owners of property proposed to be assessed object in writing, the City Council shall hear and consider objections at the hearing but may in its discretion proceed with the project according to its resolution of intent, modify the project, and amend the resolution of intent without further hearings or it may abandon the project.

2.310 Manner of Doing Work. The work may be done in whole or in part by the City, by contract, by any other governmental agency, or by any combination thereof.

2.312 Call for Bids. The Council may, in its discretion, direct the City to advertise for bids for construction of all, or any part of the project, provided, however, that no contract shall be let until after the public hearing has been held to hear objections to the proposed off-street parking facility. In the event that any part of the work of the project is to be done under contract, then the Council shall determine the time and manner of advertisement for bids and the terms and conditions of the contract.

2.314 Method of Assessment. The Council in adopting a method of assessment of the costs of the off-street parking facility may:

- (1) Use any fair and reasonable method of determining the properties specially benefited by the project and the extent of their benefit.
- (2) Use any fair and reasonable method of apportioning the sum to be assessed between the properties determined to be specially benefited.
- (3) Authorize the city to pay any part or all of the project.
- (4) Not include property which is actually used for public parking purposes or for customer (but not employe) parking in the property to be assessed for the cost of the project.

2.316 Notice of Proposed Assessment.

- (1) Prior to any assessment for an off-street motor vehicle parking facility, the City Council shall cause the City to give notice of proposed assessment to each property owner of record affected by the proposed assessment.
- (2) The notice of proposed assessment shall contain a description of the project; the total actual cost if the work is already done, or total estimated cost based upon the contract award, or estimated City departmental cost of the project; that part of the project's cost to be assessed against the property specially benefited; the record owner of each parcel of property to be assessed; the description of each parcel of property to be assessed and the amount of each assessment. The notice shall also specify the time and place at which objections to the proposed assessment may be made and that all objections to the proposed assessments must be filed with the City prior to the time set for hearing the objections.
- (3) The notice of proposed assessment shall be mailed to the record owner for each parcel of property sought to be assessed at least 15 days before the time set for hearing objections.
- (4) The notice of proposed assessment shall be published at least once giving 15 days notice of the time and place at which objections to the proposed assessment may be made.

- (5) The notice of proposed assessment shall be posted at three public places within the City of Bend at least 15 days before the time at which objections to the proposed assessment may be made.

2.318 Assessment by the City Council.

- (1) At the time and place specified in the notice of proposed assessment, the City Council shall consider all objections timely filed to the proposed assessment. The Council may adopt, correct, modify, or revise the proposed assessments and shall determine the amount of assessment to be charged against each property to be assessed according to the special and peculiar benefits accruing thereto from the project and shall by ordinance spread the assessments. The ordinance spreading the assessment may be passed either before or after the actual work on the project is done.
- (2) Upon passage of the ordinance spreading the assessment, the City shall enter the assessment in the docket of city liens at which time the assessment shall become a lien upon the property assessed superior to any other lien as provided by law. The entry in the docket of city liens must contain the description of each property liable for the assessed cost of the project, the name of the record owner, or the reputed owner thereof, or that the name of the owner is unknown, together with the sum assessed upon the property and the day of entering the same into the docket.

2.320 Notice of Assessment. Within 10 days after the ordinance spreading the assessments has been passed and entered in the docket of city liens, the City shall publish and mail a notice of assessment to the record owners of the assessed property. The notice of assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within 10 days from a certain date, which shall be the date of publication, as provided by the provisions of the Bancroft Bonding Act (ORS 223.205 to 223.295), or upon the failure of the owner to pay the assessment in full within 20 days from the date of the assessment ordinance, then interest will commence to run on the assessment and the property assessed will be subject to foreclosure; and said notice shall further set forth a description of the property assessed, the name of the owner of the property, and the amount of each assessment.

2.322 Method and Effect of Giving Notice.

- (1) Whenever any notice by mail is required by B.C. 2.300 - 2.338, it may be sent by either registered or certified mail and if directed to the record owner of real property shall be sent to the record owner's address as shown on the records of the Deschutes County Assessor. Recorded land contract purchasers shall receive notice in the same manner. Notice to any agent of the record owner or recorded land contract purchaser shall be considered notice to the principal.
- (2) Any mistake, error, omission, or failure with respect to such meaning shall not be jurisdictional or invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been given by personal service upon the property

owner, or, if personal service cannot be had, then by publication once a week for two successive weeks in a newspaper of general circulation in the City of Bend.

- (3) Publication of notice shall be done in a newspaper of general circulation within the City of Bend.

2.324 Foreclosure. Any assessment pursuant to this B.C. 2.300 - 2.338 not paid within 20 days after it is entered in the docket of City liens, or which has not been bonded pursuant to the Bancroft Bonding Act (ORS 223.205 through ORS 223.295), may be foreclosed as provided in Section 5.18 of the Amended Charter of the City of Bend and as otherwise provided by law.

2.326 Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be directed to the City, which shall determine whether there has been an error in fact. If the City shall find that there has been an error in fact, it shall recommend to the Council an amendment to the assessment ordinance to correct such error, and upon enactment of such amendment, the City shall make the necessary correction in the docket of city liens and send a correct notice of assessment by mail.

2.328 Deficit Assessment. In the event that an assessment shall be made before the total cost of the project is ascertained and if it is found that the amount of the assessment is insufficient to pay the actual cost of the project, the Council may by ordinance declare and assess the deficit. Notice of proposed assessment for the deficit shall be given as provided in Bend Code 2.316. There shall be a hearing on objections to the proposed deficit assessment as provided in Bend Code 2.318. The deficit shall be assessed as provided in Bend Code 2.318 and 2.320.

2.330 Rebates. If upon the completion of the project it is found that the assessment previously made is more than sufficient to pay the costs of the project, or at the end of any fiscal year in which the project is operated there is any net income after the payment of the operating costs, then the Council must ascertain and declare the same by resolution, and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessments and shall be apportioned and credited to the respective property owners on the same basis and according to the same formula as the original assessment. In the event that an assessment has been paid, the person who paid it, or his legal representative or assign, shall be entitled to the rebate.

2.332 Abandonment of Proceedings. The Council shall have full power and authority to abandon and rescind proceedings for off-street motor vehicle parking facilities under Bend Code 2.330 - 2.338 at any time prior to the final completion of the project.

2.334 Curative Provisions. No assessment by B.C. 2.300 - 2.338 shall be rendered invalid by reason of a failure of the report to contain all of the information required by Bend Code 2.302, or by reason of a failure to have all of the information required to be in the resolution of intent, the assessment ordinance, the lien docket, or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the record owner of any property as required by B.C. 2.300 - 2.338, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the

City Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

2.336 Reassessment. Whenever any assessment, deficit, or reassessment for any off-street motor vehicle parking facility made by the City has been, or will be, set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the City Council shall be in doubt as to the validity of any assessment, deficit assessment, or reassessment, or any part thereof, then the City Council may make a reassessment in the manner provided by the laws of the State of Oregon.

2.338 Application. The procedures described in Bend Code 2.300 - 2.336 shall be applicable to either the development by the City of an off-street parking facility or to the purchase and/or financing of an existing off-street parking facility.

## **STREET AND SIDEWALK CUTTING**

### 2.400 Definition of Terms.

- (1) Person. A natural person, firm, copartnership, association, or corporation.
- (2) Street. A way or place open as a matter of right to the use of the public, including sidewalks and alleys.
- (3) Excavation. A hole, tunnel, or other cavity in, through, across, or under a street, not including the driving or forcing of pipes through the ground, or the placement of utility poles.

2.402 Prohibition. No person shall cut, break, dig up, excavate, damage in any manner, undermine, or tunnel under any street without first making an application to the City of Bend Public Works Department and obtaining a permit as provided in Bend Code 2.400 - 2.430. This shall not apply to sidewalk surface repair.

### 2.404 Application for Permit.

- (1) Application for permits shall be made to and on a form prescribed by the Director of Public Works. Permits may be issued on an annual basis or for a limited time and shall specify the extent of the authority granted by the permit.
- (2) The application shall specify the applicant's name and address, the date the work is to start, the date the work is to be completed, the location of the work, the nature of the street involved, the purpose of the work and the size and nature of the work.
- (3) The applicant shall agree to deposit as security for his performance a bond or other security required by the provisions of B.C. 2.400 - 2.430, undertaking to save the City of Bend, its property and its employees harmless from any injury or damage which may result from the acts of the applicant, and to file a report of the work done within two working days of completion.

- (4) The application shall be accompanied by the permit fee required by B.C. 2.412.

2.406 Security.

- (1) Before the issuance of any permit, the applicant shall file with the Director of Public Works either a performance bond with a sufficient corporate surety or cash or certified check in an amount equal to the estimate of the cost of repairing the street to be excavated, including the cost of re-excavating and refilling with proper materials, if necessary, as determined by the Director of Public Works.
- (2) If a performance bond is submitted, it should undertake to secure performance of the work in accordance with all the provisions of B.C. 2.400 - 2.430, to be effective for a period of two years after completion of the work, and to reimburse the City of Bend for any work it is required to do in order to place the excavation in the necessary condition according to the terms of B.C. 2.400 - 2.430.
- (3) No security shall be required for the excavation of unimproved streets unless, in the opinion of the Director of Public Works, security is necessary for the protection of the public interest.

2.408 Insurance. Each applicant shall submit with his application a certificate of insurance designating him as the named insured under a policy of public liability insurance with policy limits in the amount of the City's tort liability limits, as set by the Oregon Legislature, together with an endorsement for completed operations.

2.410 Liability. Each applicant shall submit with his application, his agreement to pay, save, and hold the City of Bend harmless from any liability of any kind resulting from or in connection with his activities in excavating any street as provided in B.C. 2.400 - 2.430. Any person who excavates or obstructs a street as defined in B.C. 2.400 (2) shall be responsible for injury to any person or property where such obstruction or excavation is the proximate cause of the injury.

2.412 Permit. When the Director of Public Works is satisfied that the excavation applied for is feasible and proper, and that the application is in accordance with the terms B.C. 2.400 - 2.430, he may issue a permit which shall designate the name and address of the person to whom the permit is granted, the date the permit is issued, the date the work is to begin, the date the work is to be completed, and such other conditions or restrictions as may be required, including but not limited to the following:

- (1) Requiring that access to fire hydrants be available at all times.
- (2) Requiring that the actual work be confined to the hours of 7:00 a.m. to 9:00 p.m., unless otherwise specified, or to certain days.
- (3) Setting forth the maximum lengths of breaks or excavation to be open at any one time.
- (4) Requiring that access to driveways be maintained.

- (5) Requiring that the permittee reimburse the City of Bend for the cost of relocating or reestablishing City monuments, and the giving of notice where the work will interfere with monuments.
- (6) Requiring that provision be made for routing and protection of traffic.
- (7) Relating to the care and disposition of excavated material during construction.
- (8) Making provision for water courses during excavation.
- (9) Setting forth minimum or maximum depths of excavation or structures.
- (10) Providing for control of noise, dust, and debris during excavation.
- (11) Prescribing acceptable methods and materials for securing proper backfill and pavement resurfacing, including temporary surfacing if necessary.

2.414 Conduct of Work.

- (1) Work shall be done in conformity with the provisions of B.C. 2.400 - 2.430 and the terms of the application and permit, shall be prosecuted diligently to completion, shall be done in a manner approved by the Director of Public Works, shall not interfere with access to fire hydrants, and shall not interfere with City or public utilities.
- (2) Upon completion of the work, any excavation shall be filled, compacted, and the street surface restored to as good or better condition than before the work and in conformity with City standards for the particular street surface. Cold-mix asphalt patching will only be allowed as a temporary measure during adverse weather conditions, and the permanent patching shall be placed as soon as weather permits. Any person who has made an excavation in a street shall maintain the restored street surface according to City standards for two years from the date of restoration.
- (3) Traffic signs or signals or other signs shall be returned to their prior location and condition, unless otherwise directed.

2.416 Abandoned Materials. Any materials abandoned by any person in or on a street may be removed by the City at the expense of the person who abandoned the materials.

2.418 Inspection Maintenance of Excavation. The permittee shall notify the Director of Public Works within 48 hours after completion of the work and it shall be inspected and approved by the Director of Public Works or his representative. The permittee shall be required to maintain the area worked upon for a period of two years from its completion, and any repairs necessitated by the work within two years of its completion may be made by the City, after notice to the permittee and paid from permittee's security deposit.

2.420 Compliance. No work shall be undertaken other than as specified in the application and permit, and failure to comply with all the terms of the application, permit, and B.C. 2.400 - 2.430 shall be cause for revocation of the permit and the immediate termination of the work. In such event, if permittee does not promptly restore the street service, the City may do so at permittee's expense.

2.422 Barricades. Whenever any person, under authority of B.C. 2.400 - 2.430, places obstructions in the street or makes any excavation therein for any purpose, it shall be his duty to keep the obstruction or excavation property safeguarded by substantial barricades and the display of lighted red lanterns or other lights or flares or other warning devices approved by the City from dusk until daylight. Whenever the public safety requires that obstructions or excavations require constant supervision, the permittee shall be responsible for furnishing such constant supervision.

2.424 Notification of Work. Each permittee shall notify the City of Bend Police and Fire Departments, abutting owners and owners of other public utilities affected, of the proposed work. Permittee shall also submit maps, when required by the Director of Public Works, indicating all utility lines placed in any street by permittee.

2.426 City Work. The provisions of B.C. 2.400 - 2.430 shall not apply to any work by the City to be performed by its employees or by persons operating under contract with the City.

2.428 Permit Fees. The fee for a permit shall be charged as set by the City Council according to B.C. 1.800 - 1.806. Until the effective date of Ordinance No. NS-1485, that fee shall be \$3.00 for each 100 feet of work or fraction thereof, or \$50.00 for an annual permit, unless otherwise provided for by franchise ordinance or other agreement.

2.430 Emergencies. An excavation may be made in a street in the event of an emergency affecting the public safety or welfare, providing that a report of such excavation shall be made to the Superintendent of Public Works within 48 hours and all provisions of B.C. 2.400 - 2.430 are complied with as though making application for an original permit.

2.432 Penalties. A violation of Bend Code 2.400 - 2.430 is a Class A infraction and subject to the penalties specified in Bend Code 1.732. Any violator shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code section is committed, continued or permitted.

## WATER ASSESSMENT DISTRICTS

[Sections 2.500 through 2.538 repealed by Ordinance No. NS-1668, adopted December 18, 1996.]

## **TREES ON CITY PROPERTY AND PUBLIC RIGHTS-OF-WAY**

**2.500 Purpose.** It is the purpose of this ordinance to promote a diverse, healthy and sustainable urban forest and to provide for the general welfare of Bend's citizens by managing, conserving and enhancing the existing and future trees located on city property and on public rights-of-way; enhancing the appearance of the City; and providing ongoing education regarding the preservation, health and benefits of trees and Bend's urban forest.

**2.510 Definitions.** For the purpose of this Ordinance the following terms, phrases, words, and their derivation shall have the meaning given herein:

City – City of Bend, State of Oregon including its duly authorized representatives. *(from 9-16.2)*

City Property – Real property owned or controlled by the City either within or outside the City limits. *(from 5.315)*

Crown – The leaves and branches of a tree measured from the lowest branch on the trunk to the top of the tree.

Damage – Injury to a tree that compromises its health or longevity, or causes its death, including direct or indirect injury caused by insect, disease, human or animal.

Hazardous Tree - A tree or tree part that has a high potential to fail and cause damage or injury to people or property.

Major Pruning – The selective removal of over 20% of a tree's crown.

Person – Any person, firm, partnership, association, corporation, company, or organization of any kind.

Pruning – The selective removal of plant parts to meet specific goals and objectives.

Public Rights-of-Way – That portion of land acquired for construction of a roadway and supporting utilities falling under the jurisdiction of public entities. *(from 9-16.2)*

Topping – An inappropriate technique to reduce tree size; cutting a stem more than 2 years old at an indiscriminate location or back to a lateral branch too small to keep the cut stem vital (typically less than 1/3 the diameter of the cut stem); an unacceptable pruning practice that destroys tree architecture and serves to initiate discoloration and perhaps decay in the cut stem.

Tree – A woody perennial plant, usually with one main trunk, that is or will attain a height of twelve feet or a trunk diameter of at least 2 inches at 4.5 feet above natural grade.

Tree Board – The City Council or any body assembled by the City Council to hear appeals of decisions made by the Public Work director

Urban Forest Management Plan – A document that guides the work of the City’s urban forestry program and envisions a long range plan for the preservation and improvement of Bend’s urban forest. The Plan shall provide a 10-year outline for achieving urban forestry administrative, policy, educational and management goals and may contain such data as deemed necessary by the City to carry out its legal mandate. This Plan shall further implement the policies and goals of the City of Bend Urban Area General Plan. The initial Plan and subsequent updates are subject to the approval of the City Council.

Urban Forestry – The planting, management and maintenance of trees and related vegetation located within Bend’s urban growth boundary for the present and potential positive benefits and contributions to the health and livability of the city.

**2.520 Applicability and Jurisdiction.**

- (1) The provisions of this ordinance shall apply to trees located now and hereafter on city property and public rights-of-way.
- (2) The City of Bend shall have jurisdiction of all trees located now and hereafter on city property and public rights-of-way and shall have the authority to regulate the planting, maintaining, removing and replacing of such trees.
  - (a) The Public Works Director or designee is authorized to:
    - (i) Supervise the urban forestry program and implement the provisions of this ordinance.
    - (ii) Develop within three (3) years of the adoption of this ordinance an Urban Forest Management Plan and, thereafter, implement and periodically update the Plan. Best efforts shall be made to insure that activities of the urban forestry program are guided by such Plan.
    - (iii) Be the city staff liaison to the City Tree Board.

**2.530 Requires City authorization.** Written authorization by the Public Works Director or designee is required for the removal, major pruning or planting of trees on city property and public rights-of-way.

- (1) Request for written authorization shall be made at least 3 working days before the intended activity.
- (2) The Public Works Director or designee shall base his/her written authorization on the standards, goals and objectives set forth in this ordinance, the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation and the Urban Forest Management Plan.
- (3) Work done under such written authorization shall be performed in accordance with the terms and provisions of this ordinance and the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation.
- (4) No such written authorization shall be valid for a period greater than ninety (90) days after the date of its issuance.
- (5) The written authorization to remove trees may include a provision requiring the replacement of the tree(s) removed with tree(s) selected from the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation, Tree Selection Guide.
- (6) Public utility companies holding a current franchise agreement with the City are exempt from this written authorization requirement. All activities shall be conducted in accordance with the provisions of the franchise agreement.
- (7) City personnel and personnel with Bend Metro Parks and Recreation District on official business who are performing removal, major pruning or planting of trees on city property and public rights-of-way are exempt from this written authorization requirement. All activities shall be coordinated with the Public Works Director or designee and be conducted in accordance with the provisions of this ordinance, the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation and the Urban Forest Management Plan.
- (8) If the Public Works Director or designee determines a tree is hazardous, he/she may authorize immediate emergency removal or pruning of such tree. Work shall be done in accordance with the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation, unless otherwise authorized by the Public Works Director or designee.

**2.540 Responsibilities of property owner(s) of land abutting public rights-of-way.**

- (1) Except for trees located in medians on public rights-of-way, which shall be maintained by the City, it shall be the continued duty and routine obligation of property owner(s) of land abutting the public rights-of-way to perform activities required to maintain trees located on the abutting public rights-of-way in good health and vigor. Activities include watering, pruning, and protection against damage.
- (2) Tree removal and tree planting shall be the obligation of the property owner(s) of land abutting the public rights-of-way where the tree is located or will be located.
- (3) Through a written agreement with a property owner(s), the Public Works Director or designee may accept for the City, ongoing or project specific responsibility for maintaining, removing or planting tree(s) located on the public rights-of-way abutting the land owned by the property owner(s).
- (4) All activities shall be conducted in accordance with this ordinance and the City of

**2.530**

**BEND CODE**

**2.540**

Bend Standards and Specifications, Division VI – Landscape and Irrigation.

**2.550 Work Standards and Specifications.**

- (1) Work done on and near trees located on city property and public rights-of-way shall be performed in accordance with the terms and provisions of this ordinance and the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation.
- (2) The Public Works Director or designee shall develop specifications and standards for activities affecting trees located on city property and public rights-of-way, including planting, maintenance, protection and removal of trees within the City of Bend Standards and Specifications. The standards and specifications shall be consistent with the landscaping provisions of Section 10-10.23 of the City of Bend Zoning Ordinance.
  - (a) The City of Bend Standards and Specifications, Division VI - Landscape and Irrigation shall include a Tree Selection Guide; a list of tree species, varieties and cultivars thereof, approved for planting on city property and public rights-of-way. Tree species, varieties and cultivars thereof, not included in the Tree Selection Guide may be considered and approved by the Public Works Director or designee for planting. Approval shall be based upon the suitability and appropriateness of the tree species, variety or cultivar for the planting site.
  - (b) The Public Works Director or designee shall maintain and update as necessary these standards and specifications. All amendments are subject to approval by the City Council.
- (3) The City recognizes the American National Standards Institute A300 Standards for Tree Care Operations as the appropriate standard for tree care. ANSI A300 standards for pruning shall apply to any person or entity engaged in the performance, business or trade of repairing, maintaining or preserving trees on city property or on public rights-of-way. The city shall incorporate by reference the most recent version of the ANSI A300 within the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation and maintain the most recent version of the ANSI A300 for public review.
- (4) Except for immature trees of insufficient height to prune and retain a crown that is at least 2/3 the height of the tree, trees located on city property and public rights-of-way shall be pruned to maintain at a minimum a clearance height of 8' over public sidewalks and a clearance height of 14' over arterial and collector streets.
- (5) The City's Clear Vision Area requirements shall be maintained in accordance with the standards and specifications stated within Section 10-10.27 of the City of Bend Zoning Ordinance.
- (6) Trees located on city property and public rights-of-way that are located within fifteen (15) feet of any excavation, demolition or construction site, including the erection, repair, alteration or removal of any buildings, structures, street, utilities or landscaping, may require protection from harm and injury, as determined by the Public Works Director or designee. Protection measures shall be conducted in accordance with the City of Bend Standards and Specification Division VI – Landscape and Irrigation.

**2.560 Activities Prohibited.** Unless specifically authorized in writing by the Public Works Director or designee:

- (1) No person shall top a tree located on city property or on public rights-of-way. Authorization to top a tree shall be based upon the determination that topping is necessary to alleviate a dangerous or hazardous condition, including electric service interruptions, which pose an imminent threat to the public or property.
- (2) No person shall attach or keep attached to any tree located on city property or on public rights-of-way any ropes, wires, chains or other device whatsoever, except that the same may be attached to any tree as support or protection of such tree.
  - (a) Seasonal holiday lights attached in accordance with the standards and specifications within the City of Bend Standards and Specifications, Division VI - Landscape and Irrigation is permissible for a period not to exceed 90 days, unless otherwise approved by the Public Works Director or designee .
- (3) No person shall damage any tree located on city property or on public rights-of-way; allow any gaseous liquid or solid substance which is harmful to such tree to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any such tree.
- (4) No person shall remove, major prune or plant a tree located on city property or on public rights-of-way without authorization from the Public Works Director or designee.

**2.570 Penalties and Appeals.**

- (1) A violation of 2.500 – 2.560 is a Class A Civil Infraction.
- (2) Any action related to this code section by the Public Works Director or designee may be appealed to and heard by the Tree Board. To be effective, an appeal shall be filed within fourteen (14) working days after the decision of the Public Works Director or designee. The appeal shall be in writing and shall be filed with the City Recorder for placement on the Tree Board's agenda. The appeal shall clearly specify the reasons for which a hearing is requested. After a hearing, the Tree Board shall render its decision, which shall be final unless appealed to the City Council. To be effective, an appeal to the City Council shall be in writing, state the reasons for the appeal, and shall be filed with the City Recorder within fourteen (14) working days after notice of the decision of the Tree Board is mailed to the applicant. The decision of the City Council shall be final.

**2.580 Severability.** If any subsection, sentence, clause, provision or part of this Ordinance shall be held invalid for any reason, the remainder of this Ordinance shall not be affected thereby, but shall remain in force and effect.

[Section 2.500 to 2.580 added by Ord. NS-1990, adopted January 4, 2006]

**ECONOMIC IMPROVEMENT DISTRICTS**

2.600 Procedures for Establishing Economic Improvement Districts. The purpose of Section 2.600 through 2.612 is to establish procedures for establishing economic improvement districts within the City of Bend, and assessing the costs of economic improvement projects within these districts. Sections 2.600 through 2.612 are intended to implement ORS 223.112 to 223.132 as they exist, and as they may be amended in the future. The procedures required by state law and Bend Code 2.600 - 2.612 shall be followed.

2.602 Public Hearing. A public hearing shall be held on an assessment ordinance for any proposed economic improvement project within an economic improvement district. Notices of the hearing shall be mailed or delivered personally to the affected commercial property owners. The hearing shall be held not sooner than 30 days after the mailing or delivery of the notices. The owners may appear to support or object to the proposed improvement and assessment at the hearing.

2.604 Assessment by City Council. If, after the hearing held pursuant to Section 2, the City Council determines that the economic improvement shall be made, the Council shall determine whether the property benefitted shall bear all or a portion of the cost and shall determine, based on the actual or estimated cost of the economic improvement, the amount of assessment on each lot in the district. The City shall then prepare the proposed assessment for each lot in the district. Notice of such proposed assessment shall be mailed or personally delivered to the owner of each lot or parcel to be assessed, which notice shall state the amount of the assessment proposed on the property of the owner receiving the notice. The notice shall state the time and place of another public hearing at which affected property owners may appear to support or object to the proposed assessment. This hearing shall not be held sooner than 30 days after the mailing or personal delivery of the notices.

2.606 Objections to Assessments. At this second hearing, the Council shall consider objections, and may adopt, correct, modify, or revise the proposed assessments. The assessment ordinance shall also provide that the assessments will not be made and the economic improvement district terminated when written objections are received at the public hearing from owners of property upon which more than 33 percent of the total amount of assessments is levied.

2.608 Further Consideration of Objections to Assessments. If written objections are received at the second public hearing from less than 33 percent of the total amount of assessments levied, the City Council, may, at its discretion, provide that the economic improvement project may be undertaken or constructed but that property whose owners submitted written objections will not be assessed. If the City Council elects to follow this procedure, it shall proceed as provided in ORS 223.118.

2.610 City Lien Docket. Upon adoption of the final assessment ordinance the City shall enter each assessment in the docket of City liens. All such assessments shall be collected in the same manner as local improvements according to state law, the City of Bend Charter and ordinances.

**2.612**

**BEND CODE**

**2.612**

2.612 Expenditure of Assessments. Money derived from the assessments levied under the procedures set forth in this ordinance shall be spent only for projects and activities set out in ORS 223.112.

[Sections 2.600 - 2.612 added by Ordinance No. NS-1662, passed September 4, 1996.]

[Sections 2.100 – 2.612 amended by Ordinance No. NS-1688, passed September 3, 1997.]

**REIMBURSEMENT DISTRICTS.**2.700 Definitions.

1. "City Engineer" or "Engineer" means the person holding the position of City Engineer or any officer or employee designated by the City Manager to perform duties stated within this chapter.
2. "City" means the City of Bend.
3. "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.
4. "Applicant" means a person, as defined in Subsection 1.3, who is required or chooses to finance some or all of the cost of a street, water or 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.
5. "Street Improvement" means a street or street improvement conforming with City 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.
6. "Water Improvement" means a water or water line improvement conforming with City standards and including but not limited to extending a water line to property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the line.
7. "Sewer Improvement" means a sewer or sewer line improvement conforming with City standards and including but not limited to extending a sewer line to property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the line.
8. "Reimbursement District" means the area which is determined by the City Council to derive a benefit from the construction of street, water or sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.
9. "Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement. The term Reimbursement Fee does not include any Local Improvement District Assessment or any System Development Charge established by Oregon Law.

2.710 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 or 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 Finance Department, request that the City establish a reimbursement district. The street, water and sewer 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 resolution, sufficient to cover the cost of administrative review and notice pursuant to this Chapter.
2. The application must be filed with the City Finance Department before improvements are constructed.
3. 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. Applicant may request a discretionary annual fee adjustment, which, if granted, will be administered pursuant to Section 13.

- f. An acknowledgement by the applicant that the applicant agrees to indemnify, defend and hold harmless the City of Bend, its elected officials, appointed officials, employees and agents from any and all claims that may arise from the creation or administration of the district. This acknowledgement shall release the City of Bend, its elected officials, appointed officials, employees and agents from any and all claims that reimbursements fees were improperly collected, collected in the wrong amount, or not collected at all, for any reason, including negligence on the part of the City of Bend, its elected officials, appointed officials, employees and agents. The applicant shall acknowledge that the applicant accepts all risk that reimbursement will not occur, or will not occur in the amount expected by the applicant.

2.715 City Engineer's Report.

1. 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 or sewer 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 district by the City. The administration fee shall be fixed by the City Council and will be included in the resolution approving and forming the reimbursement district. If the applicant is other than the City, the administration fee is due and payable to the City at the time the agreement in Section 7.2 is signed. If the City is the applicant, the administration fee shall be included in the reimbursement fee and is due and payable at the time there is an obligation to pay the reimbursement fee as required by Section 12.
- f. The period of time that the right to reimbursement exists, if the period is less than ten years.

2.720 Amount To Be Reimbursed.

1. The cost to be reimbursed to the applicant, if other than the City, shall be limited to the cost of construction, engineering, and off-site right of way. If the applicant is the City, the costs to be reimbursed shall also include an administration cost and all costs associated with the acquisition of easements and rights of way. Engineering shall include surveying and inspection and shall not exceed 13.5% of eligible construction cost. If the applicant is other than the City, the 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, 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, project management fees 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.
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 and formation public hearing stages of an application.
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.

2.725 Public Hearing.

Within a reasonable time after the City Engineer has completed the report required in Section 3, 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 public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

2.730 Notice of Public Hearing.

Not less than 10 nor more than 30 days prior to any 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 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.

2.735 City Council Action.

1. After the public hearing held pursuant to Section 5, 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. 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. 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. The applicant shall acknowledge that the City is not obligated to collect the reimbursement fee from affected property owners, and that the applicant 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.
  - d. Other provisions as the City Council determines necessary and property to carry out the provisions of this Chapter.
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 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 or sewer improvement within the reimbursement district.

#### 2.740 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.

#### 2.745 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 City shall also record the obligation of each benefited property to pay a reimbursement fee in the City's lien docket. 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.

2.750 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. Legal challenge shall only be by writ of review pursuant to ORS 34.010 through 34.100. A decision by the City of Bend to create a reimbursement district is a quasi judicial decision.

2.755 Final Public Hearing.

1. Within three months after completion and acceptance of the improvements for a one-year maintenance period, the applicant shall submit to the City Engineer the actual cost of the improvements as evidenced by receipts, invoices, canceled checks and other similar documents. The City Engineer shall review the actual costs and shall prepare a written report for the City Council recommending revisions to the report prepared under Section 3.
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 11.1, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to 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 Section 5. Following the 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.

2.760. 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;



5. Neither the City of Bend, Deschutes County, the State of Oregon nor the United States shall be required to pay a Reimbursement Fee without the consent of such governmental agency.
6. The right of reimbursement shall not extend beyond ten years from the district formation date. The applicant solely and exclusively bears the risk that the City may not collect from benefited property owners their respective share of the cost of the improvement, and that the total amount collected may be less than anticipated. Further the applicant acknowledges that by utilizing the procedures of this ordinance that the City shall be under no obligation to institute legal proceedings to collect unpaid amounts that may be due to the applicant. The applicant must institute and pay for such legal proceedings, and the City will not be obligated to share or pay the litigation costs associated with such proceedings.
7. The applicant shall warrant the improvement against defects in materials or quality of construction for a period of one year from the date of preliminary acceptance as provided in Section 11.1.

2.765 Annual Fee Adjustment.

1. 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.
2. 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 at the time that a district is formed and shall be the same each year.
3. 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.

2.770 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, and after approval of assignment by the City.

**2.770**

**BEND CODE**

**2.770**

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. on January 31st of each year.
3. 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.

[Section 2.700 through 2.770 added by Ordinance NS-2008, adopted May 17, 2006]