

ORDINANCE NO. 2009-1

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONES OF BENEFIT  
AND REIMBURSEMENT FOR WATER PUBLIC IMPROVEMENTS

La Pine Water District (hereinafter referred to as "District") ordains as follows:

**Section 1. Purpose.**

This ordinance provides a method to reimburse a person or the District for financing the construction of a water main improvement in whole or in a disproportionately large part. It is intended to be used to mitigate the cost of financing such public improvements by distributing those costs to other benefited property owners, at the time those benefited property owners connect to or make use of the improvement.

**Section 2. Definitions.**

(1) Person. An individual or any legal entity, including District.

(2) Zone Connection Charge. The charge imposed pursuant to this ordinance, designed to reimburse a person for the costs of financing a water main improvement. The Zone Connection Charge is not intended to limit or replace, and is in addition to, any other existing fees or charges collected by the District.

(3) Zone of Benefit. The area benefited by the construction of water public improvements financed in whole or in part by a person without the formation of a local improvement district. A Zone of Benefit may be formed in conjunction with a local improvement district where a person finances a share of the cost of the improvement that is larger than the share that would result from a uniform application of the district assessment formula to property located in the district and owned by the person. The Zone of Benefit may include properties outside the District.

**Section 3. Initiation of Proceedings.**

(1) Any person may apply to the District to form a Zone of Benefit where the person chooses or is required as a condition of permit approval to construct a water main improvement that includes additional or oversized improvements required to provide service to property other than property owned by the applicant.

(2) An application to form a Zone of Benefit may be made no later than three months after completion and acceptance by District of the water main improvements. The District may waive this deadline if the applicant demonstrates that the delay was not caused by the applicant, and was created by unanticipated or unforeseen circumstances.

(3) The application shall be accompanied by a processing fee established by resolution of the District Board sufficient to cover the administrative and notice costs of processing the application. (Fee will be dependent on size and complexity of Zone of Benefit, and will be determined individually by the District.) The application will consist of the standard form provided by the District and shall include the following:

(a) A description of the location, type, size and cost of the public improvement.

(b) A narrative explaining why the applicant believes all or part of the cost of the improvement is eligible for reimbursement pursuant to this ordinance.

(c) A map showing the properties to be included in the proposed district, including the City of La Pine's zoning designation; the square footage or frontage of all property or properties; and identification of the properties owned by the applicant, if any.

(d) The cost of the improvements to be reimbursed. If the application is filed after construction, the application shall include the actual cost of construction as evidenced by a contract, receipts, bids or other similar documents. If the application is filed prior to construction, the application shall include the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other similar evidence satisfactory to the District.

(e) A proposed methodology for spreading the cost among the properties within the Zone of Benefit and, where appropriate, defining a "unit" for applying the Zone Connection Charge to property that may, subject to City approval, be partitioned, adjusted or subdivided at a future date. The methodology should consider the factors set forth in Section 4(1)(e) of this Ordinance pertaining to the District Engineer's report.

(f) The date that the District accepted the public improvements or the date that the improvements are estimated to be completed.

(g) The fee, established by Board resolution, sufficient to cover the cost of administrative review, including engineer and other professional time, and notice.

The District may request the submittal of any additional information deemed relevant.

#### **Section 4. Engineer's Report.**

(1) Upon receipt of a Zone of Benefit application, as determined by the District Engineer, the District Engineer shall review the request for the establishment of a Zone of Benefit and prepare a report containing the District Engineer's recommendation to be submitted to the Board within 60 days after receipt of the complete application. The report shall include the following information:

(a) An explanation as to why the applicant is or is not qualified for reimbursement pursuant to this Ordinance;

(b) A description of the proposed area for the Zone of Benefit. The description shall indicate whether properties located outside of District boundaries should be considered for inclusion within the Zone of Benefit upon annexation.

(c) An estimate of the actual total costs of the public improvement and the portion of the cost for which the applicant should be reimbursed in accordance with this Ordinance.

(d) The extent to which the improvement has relieved or will relieve other property owners or developers of the need to construct some or all of the improvement and whether or not the properties within the proposed Zone of Benefit would be required, as a condition of approval for future development, to construct some or all of the improvement. If quantifiable, this information should reflect the amount or percent of unused capacity provided for future users.

(e) A methodology for spreading the cost among the properties within the Zone of Benefit and, where appropriate, defining a "unit" for applying the Reimbursement Charge to property that may, subject to City approval, be partitioned, adjusted or subdivided at a future date. The methodology should consider the cost of the improvements, prior contributions of property owners (only if for the same type of improvement at the same location), the value of the unused capacity,

rate making principles employed to finance public improvements, and other relevant factors.

(f) A proposed Reimbursement Charge for the District.

(2) The cost to be reimbursed to the applicant, if other than the District, shall be limited to the cost of construction, engineering, acquiring off-site rights-of-way, and proportionate share of the value of property dedicated to the District. If the applicant is the District, 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, but shall not exceed 15% of eligible construction costs. If the applicant is other than the District, the costs to be reimbursed for rights-of-way shall be limited to the reasonable market value of land or easement purchased from a third party to complete off-site improvements. Actual costs shall not be deemed reasonable if the District determines that such costs significantly exceed prevailing market rates for similar projects or discreet portions thereof. In such a case, the District may reduce the reimbursable cost to the prevailing market rate for similar projects, or discreet portions thereof. In addition, the following costs shall not be subject to reimbursement:

(a) Costs for that portion of the improvement that benefits the applicant's own property.

(b) Costs for improvements that are not dedicated to and accepted by the District as a public improvement.

(c) Costs for a public improvement that is required as a condition of development approval, except in cases where the nature and degree of the public improvement is disproportionate to the impacts of the development or where the District desires an oversized or additional improvement beyond that which is roughly proportional to the impact of the development.

(d) Financing costs; permits or fees required for construction permits; land or easements dedicated by the applicant; costs that are eligible for System Development Charge credits; or any costs that cannot be clearly documented.

(e) Costs for relocation of electrical, telephone, cable television or natural gas utility relocation benefiting an applicant's property.

(f) Costs for extra work or materials required to correct deficiencies in construction to bring the improvement to District standards.

(g) Costs for water improvements that are the minimum size necessary to meet District and Fire Department standards and serve an applicant's property.

(h) Costs for a minor street realignment, except for the cost of right-of-way acquisition beyond the limits of the applicant's frontage along the improved street.

**Section 5. Formation of Zone of Benefit.**

(1) Upon District's receipt of a complete application for the establishment of a Zone of Benefit, the District will set a hearing before the District Board to consider the request. Not less than ten (10) days before the hearing, notice of the hearing shall be: (1) published in a paper of general circulation, and (2) mailed by regular mail to the applicant and to all property owners within the proposed Zone of Benefit as shown on the most recent assessment role in the county assessor's office. Notice shall be deemed effective on the date of mailing. Failure to receive notice by the applicant or affected property owners shall not invalidate or otherwise affect formation of the Zone of Benefit.

(2) The notice shall:

(a) State a Zone of Benefit has been proposed that includes the property of the person receiving notice;

(b) Briefly describe the Zone of Benefit, the water main improvement to be reimbursed; the amount (or estimated amount) of the Zone Connection Charge; and the circumstances under which the charge must be paid; and

(c) Set the time, date, and location of the hearing.

## **Section 6. Hearing.**

At the hearing, the District Board shall consider:

(1) The proper boundaries to the Zone of Benefit, taking particular consideration of all properties contiguous to or otherwise located so as to directly benefit from the improvement; and

(2) The reasonable actual or estimate of costs for which applicant may be reimbursed pursuant to Section 4(2) of this Ordinance. The applicant shall not be entitled to reimbursement for any costs in excess of reasonable actual costs. If the Zone of Benefit is formed before actual costs are known, the Zone Connection Charge may be based on estimated costs. If estimated costs are used, the methodology or the certificate of payment or both shall provide for a recalculation of the cost not later than three (3) months after completion and acceptance of the improvement by the District.

## **Section 7. Resolution.**

(1) If the Board determines that formation of a Zone of Benefit is appropriate, the Board shall establish that Zone by resolution. The resolution shall:

- (a) Establish the area of the Zone of Benefit, the Zone formation date, and the date when the right of reimbursement ends.
- (b) Set forth the actual or estimated cost of the water main improvements, and the portion of the costs for which the applicant should be reimbursed.
- (c) Establish the Zone Connection Charge methodology and show an example of the methodology used to calculate the Zone Connection Charge.
- (d) Establish the Zone Connection Charge for the Zone.
- (e) Direct that a certificate of payment and right of reimbursement be issued to the Zone applicant.

(2) Upon the resolution's adoption, it shall be sent to the applicant and all affected property owners, and recorded in the office of the county recorder to provide notice to potential purchasers of property within the Zone. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the formation or the obligation to pay the Zone Connection Charge.

## **Section 8. Challenge to Formation.**

No legal action intended to challenge or contest the formation of the Zone of Benefit, the methodology, or the amount of the Zone Connection Charge shall be filed after sixty (60) days following formation of the Zone of Benefit. Challenge shall be only as provided in ORS 34.011 to 34.100, and not otherwise.

**Section 9. Agreement and Right to Reimbursement.**

The right to reimbursement is a contractual right between the District and the applicant. When the applicant is other than the District, the resolution shall instruct the District to enter into an agreement with the applicant pertaining to the zone of benefit improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the water main improvements being accepted by the District. The agreement shall contain at least the following provisions:

- (1) Identification of the person receiving the right of reimbursement;
- (2) The water main improvement(s) shall meet all applicable District standards;
- (3) That the total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s);
- (4) The reimbursable amount;
- (5) The Zone Connection Charge;
- (6) The area of the Zone of Benefit;
- (7) The date of Zone formation; and
- (8) The date upon which the right to reimbursement ends;
- (9) Applicant shall guarantee the water main improvement(s) for a period of 12 months from the date of installation;
- (10) Applicant shall defend, indemnify, and hold the District harmless from any and all losses, claims, damage, judgments or other costs or expenses arising as a result of or related to the District establishment of the zone of benefit, including the District's costs or expenses related to collection of the reimbursement charges pursuant to the resolution;
- (11) That Applicant's right to reimbursement is assignable and transferable after written notice is delivered to District advising the District to whom future payments are to be made;

(12) That District shall make reasonable efforts to properly account for and collect the Zone Connection Charge from an affected property, including the District's costs or expenses related to collection of the Zone Connection Charge.

(13) Any other provisions the Board deems necessary and proper to carry out the provisions of the zone of benefit ordinance, resolution and agreement.

**Section 10.      Payment.**

(1) An owner of property within any Zone of Beneflt shall pay the District, in addition to any other applicable fees and charges, the Zone Connection Charge established by District resolution when any of the following events occur:

(a)The property owner receives flnal approval for a development permit to subdivide or partition property located within the Zone.

(b)A use of property is expanded to create additional "units," as that term is deflned in the resolution for the particular zone or changed to increase useage. The term "unit" is not limited to residential uses.

(c)A property owner connects to the water line.

(2) The Zone Connection Charge is due and payable as a precondition of receiving the flrst District permit applicable to the development activity undertaken, or, in the case of a connection to a line, as a precondition of receiving the connection permit.

(3) A person who becomes obligated for payment of the Zone Connection Charge as a result of connection to a line constructed through the local improvement district process and who owns property within the district upon which an assessment is levied may be assessed for the Zone Connection Charge in addition to the assessment levied through a local improvement district.

(4) Zone Connection Charges shall be collected by District and paid to the Zone applicant until the earlier of ten (10) years from the Zone formation date or the reimbursement amount specifed in the appropriate Zone of Beneflt resolution is recouped. If the District paid the initial cost of construction or a portion thereof, the District will deposit that amount in the fund corresponding to the improvement made. The District may apply collected Zone Connection Charges to any outstanding assessments owed to the District by the applicant.

ADOPTED this 12th day of February, 2010, by action of the Board of Commissioners.

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President

ATTESTED:

Secretary