

**ORDINANCE NO. 04-603-O****AN ORDINANCE PROVIDING FOR METHODS OF REIMBURSEMENT OF ADVANCE FINANCING FOR PUBLIC IMPROVEMENTS.**

The City of Columbia City ordains as follows:

Section 1. Purpose. The purpose of this Ordinance is to provide a method of financial reimbursement to developers for a share of costs incurred in installation or construction of public improvements that will benefit intervening or future property owners.

Section 2. Definitions. The following are definitions for the purposes of this Ordinance and for the purposes of any advance financing agreement entered into pursuant hereto and for any actions taken as authorized pursuant to this Ordinance or otherwise:

"Advance Financing" means a developer's payment for the installation of one or more public improvements installed pursuant to this Ordinance which benefiting property owners may utilize upon reimbursing a proportional share of the cost of such improvement.

"Advance Financing Agreement" means an agreement between a developer and the City, as authorized by the City Council, which provides for the installation of and payment for advance financed public improvements and for reimbursement by the intervening and future property owners who may eventually use such improvement.

"Advance Financing Resolution" means a resolution of the Council designating a public improvement to be an advance financed public improvement and containing provisions for financial reimbursement by intervening and future property owners who eventually use the improvement and such other provisions as determined necessary by the Council.

"City" means the City of Columbia City, Oregon.

"Council" means the Common Council of the City of Columbia City, Oregon.

"Developer" means the City, an individual, a partnership, a joint venture, a corporation, a subdivider, a partitioner of land or any other public or private entity, without limitation, which will bear, under the terms of this Ordinance, the expense of construction, purchase, installation, or other creation of a public improvement.

"Development" means that development project or property being developed by a developer for which the advance financing resolution is passed.

"Future Property" means that real property which, by virtue of installation of oversized or over capacity advance financed public improvements, may be served, all or in part, by such improvement, but does not include the development or intervening property.

"Intervening Property" means that real property abutting an advance financed public improvement, but does not include the development.

"Owner" means the holder of legal title to real property. Where such real property is being purchased under a recorded land sale contract, then such purchaser shall also be deemed an owner.

"Public Improvement" means the following:

- A. The grading, graveling, paving or other surfacing of any street; or opening, laying out, widening, extending, altering, changing the grade of or constructing any street;
- B. The construction of sidewalks;
- C. The construction or upgrading of a sanitary or storm sewer;
- D. The construction or upgrading of a water supply system or facility;
- E. Those "capital improvements" as provided in Oregon Revised Statutes 223.299(1) as now written or hereafter amended; and
- F. Any other public improvement authorized by the Council.

### Section 3. Receipt of Application.

A. The City will receive applications for advance financing from developers, which applications shall be submitted to the Public Works Department and shall be accompanied by a fee established by Council resolution. The fee will be to defray the cost of City analysis of the proposed advance financing project, the cost of notifying property owners, recording costs and other administrative expenses. When the City or other public agency is the developer, the City Administrator/Recorder may submit the application to the Public Works Department without the fee.

B. The application shall include the following:

- (1) A description of the location, type, size and cost of the public improvement to be advance financed.
- (2) A map showing intervening and future properties, front footage of intervening and future properties, the development, and a list of intervening and future property owners with current mailing addresses.
- (3) The estimated reimbursement amount from each intervening and future property based on the formula proposed for reimbursement.
- (4) The estimated date of installation if it is a pre-installation application or the date the City accepted the public improvement if it is a post-installation application.
- (5) The estimated cost of the public improvement if it is a pre-installation application or the actual cost of the public improvement as determined by receipts, invoices and other documents satisfactory to the City Engineer if it is a post-installation application.

C. The application may be submitted to the City prior to the installation of the public improvement but not later than 180 days after such installation. The

City Administrator/Recorder may grant one 90-day extension prior to the expiration of the 180-day period for good cause.

Section 4. City Staff Analysis. Upon receipt of the advance financing application, the Public Works Department shall analyze the proposal and submit a report to the City Administrator/Recorder for Council review and public hearing. Such report shall include a map showing the location and dimensions of the development and all future and intervening properties. The report shall also include the City Engineer's estimate of the total cost of the advance financed public improvement. The report shall also include the City Engineer's analysis of whether the estimated actual cost of the public improvement is reasonable, the estimated advance financed reimbursement due from each intervening and future property owner, and whether the public improvements will or have met City standards.

Section 5. Public Hearing. Within a reasonable time after the Public Works Department has completed its analysis, an informational public hearing shall be held in which all parties and the general public shall be given the opportunity to express their views pertaining to the proposed advance financed public improvement. Since advance financed public improvements do not give rise to assessments, the public hearing is for informational purposes only, and is not subject to mandatory termination due to remonstrances. The City Council has the sole discretion after the public hearing to decide whether an advance financing resolution shall be adopted, what property constitutes benefiting properties, and the appropriate level of reimbursement to be imposed on each benefiting property.

Section 6. Notification. Not less than ten (10) nor more than thirty (30) days prior to the public hearing, the developer and all intervening and future property owners shall be notified of the hearing and the purpose thereof. Such notification shall be accomplished by regular mail or by personal service. If notification is accomplished by mail, notice shall be effective on the date that the letter or notification is mailed. Failure of any owner to be so notified shall not invalidate or otherwise affect any advance financing resolution

Section 7. Advance Financing Resolution and Agreements.

A. After the public hearing held pursuant to Section 5, if the Council decides that the application meets the purposes of this Ordinance, it may pass an advance financing resolution accordingly. The resolution shall designate the proposed improvement as an advance financed improvement and provide for advance financed reimbursement by intervening and future property owners pursuant to this Ordinance. The resolution shall designate and describe all intervening and future property subject to the resolution. When the developer is other than the City, the advance financing resolution shall instruct the City

Administrator/Recorder to enter into an agreement between the developer and the City pertaining to the advance financed improvement, which may require such guarantee or guarantees as the City Administrator/Recorder deems necessary to protect the public and intervening and future property owners, and may include such other provisions as the City Administrator/Recorder determines necessary and proper to carry out the purposes of this Ordinance. More than one public improvement may be the subject of a single advance financing agreement or resolution.

B. The City shall notify all intervening and future property owners and the developer of the adoption of an advance financing resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of this Ordinance.

Section 8. Advance Financed Reimbursement. An advance financed reimbursement obligation shall be imposed on all intervening and future property owners at such time as such owners apply for connection to advance financed facilities or apply for building permits for projects that use an advance financed public improvement. Such reimbursement shall be at the rates established in Section 9 if this Ordinance.

Section 9. Rates of Reimbursement.

A. Intervening Property Owners. The advanced reimbursement imposed on intervening property owners shall be calculated as described in Subsection C of this Section. Financing reimbursements for odd-shaped lots shall be individually established and consistent with the benefit received by the lot and the reimbursement required of other lots in the area.

B. Future Property Owners. The advance financed reimbursement imposed on future property owners shall be calculated as described in Subsection C of this Section. Advance financing reimbursements for odd-shaped lots shall be individually established and consistent with the benefit received by the lot and the reimbursement required of other lots in the area.

C. Formula for Calculating Advance Financed Reimbursement. Advance financing reimbursement shall be calculated by one of the following three methods based on the method which the Council determines provides the most equitable reimbursement for all properties involved:

(1) Benefit to the Property Method. Reimbursements may be based on the Equivalent Dwelling Unit (EDU). An Equivalent Dwelling Unit is defined as a single-family residence located on a single lot of record. Where no specific project values are available, because no development proposal has been submitted, the following table shall be used to determine the number of EDUs applicable to any given property:

Land Use Designation	Net Density EDU/Acre
R-1 - Moderate Density Residential Zone	3.30
R-2 - Moderate Density Residential Zone	3.30
R-3 - High Density Residential Zone	10.00 <sup>1</sup>
MHP - Manufactured Home Park Zone	8.00

The calculation shall be: The total actual cost of the advance financed public improvements divided by the total number of EDUs applying to the advance financed public improvement including the development. If inequities are created by the strict implementation of the

above formula, the Council may modify the formula on a case-by-case basis.

(2) Front Footage Method. The total actual cost of the advance financed public improvements multiplied by a percentage of front footage owned by the intervening or future property owner of the total front footage served by the advance financed public improvement including the development. If inequities are created by the strict implementation of the above formula, the Council may modify the formula on a case-by-case basis.

(3) Square Footage Method. The total actual cost of the advance financed public improvements multiplied by a percentage of the intervening or future property owner's percentage of ownership of the total acreage served by the advance financed public improvement including the development. If inequities are created by the strict implementation of the above formula, the Council may modify the formula on a case-by-case basis.

D. For the purpose of this Section, "actual total cost" may include interest payments and fees related to project loan financing. Thereafter the reimbursement calculated in Subsection C of this Section may be increased by nine (9) percent annual simple interest from the date of completion of construction of the development, or such other percentage as the Council may from time to time set by resolution, multiplied by the number of EDUs served by each of the intervening or future lots.

#### Section 10. Collection.

A. An advance financed reimbursement is immediately due and payable by intervening or future property owners upon their application for connection to an advance financed sewer or water facility or any building or development permit the result of which will be the use of any advance financed

<sup>1</sup> River Club Estates Subdivision platted in Columbia City, is zoned R-3, and is limited to single family development. In that subdivision, development is limited to 3.3 per acre standard.

public improvement; provided however, that a building permit to add to or remodel an existing structure which does not increase the use of an advance financed street will not cause payment to be due. If connection is made or construction commenced without the above permits, then the advance financed reimbursement is immediately due and payable as of the earliest date that any such permit was required. No permit for connection or construction shall be issued until the required advance financed reimbursement is paid in full or otherwise processed pursuant to the terms of Subsection B of this Section. Whenever the full and correct advance financed reimbursement has not been timely paid and collected for any reason, the City Administrator/Recorder shall report to the Council the amount of the uncollected reimbursement, the description of the real property to which the reimbursement is attributable, the date upon which the reimbursement was due and the name or names of the intervening or future property owners. The Council, by motion, shall then set a public hearing and shall direct the City Administrator/Recorder to give notice of that hearing to each of those intervening and future property owners, together with a copy of the City Administrator/Recorder's report concerning the unpaid reimbursement, either in person or by certified mail. Upon public hearing, the Council may accept, reject, or modify the City Administrator/Recorder's report, and if it finds that any reimbursement is unpaid and uncollected, the Council, by motion, may direct the City Administrator/Recorder to record the unpaid and uncollected reimbursement as a lien upon the property with Columbia County. Upon completion of the recording, the City shall have a lien against the described land for the full amount of the unpaid advance financed reimbursement, interest, and the City's actual cost of serving notice upon the intervening or future property owners. The lien shall be enforced in the manner provided by Oregon Revised Statutes, Chapter 223.

B. Whenever an advance financed reimbursement is due and collectable, the intervening or future property owner may apply, upon forms provided by the City Administrator/Recorder, for the voluntary imposition of a lien upon a parcel for the full amount of the advance financed reimbursement and the payment of that lien in twenty (20) equal semiannual installments including interest. The applicant must provide a certificate from a licensed title insurance company showing the identity and amount of all other liens of record against the property and a certificate from the County Tax Assessor showing the assessed valuation of the property. The City shall not permit a lien greater than the assessed value less the combined total principal balance and accrued interest on all prior liens. Upon receipt of such certificates and application, the City Administrator/Recorder shall compute the amount of the advance reimbursement, the date upon which the reimbursement is due, the name or names of the applicant/owners and the description for the property. Upon receiving that report, the City Administrator/Recorder shall record the lien with Columbia County. From the time that the recording is completed, the City shall have a lien upon that land for the amount of the charge and interest upon that

charge at the rate established by the Council for local improvement districts, which interest shall be the full and only compensation to the City for its administrative costs. The lien shall be enforced in the manner provided in Oregon Revised Statutes, Chapter 223.

Section 11. Disposition of Advance Financed Reimbursements.

A. Developers shall receive a portion of advance financed reimbursements collected by the City pertaining to their advance financed public improvements. Such portions shall be delivered to the developer for a period of ten (10) years from and after the date the applicable advance financing agreement has been executed. In addition, any developer, or the developer's heirs, successors or assigns may apply at five-(5) year intervals for two five-(5) year extensions beyond the initial ten-(10) year period. Such payments will be made by the City within ninety (90) days of receipt of the advance financed reimbursements. All portions of the advance financed reimbursement, including interest, not paid to the developer under the terms of this Ordinance shall be retained by the City to be used for related system improvements as authorized from time to time by the Council.

B. The City shall retain 2% but not less than \$50.00 per reimbursement for administrative services performed in collecting and distributing the reimbursements.

C. No developer shall receive both advance financing reimbursement and a credit against system development charge payments for oversizing of the same facility. An application for advance financing reimbursement shall, if approved, constitute a waiver of such system development charge credits.

Section 12. Recording. All advance financing resolutions shall be recorded by the City in the deed records of Columbia County. Such resolution shall be notarized and shall identify the legal descriptions of the development, intervening properties, and future properties. Failure to so record shall not affect the legality of an advance financing resolution or agreement.

Section 13. Ownership of Public Improvements. Public improvements installed pursuant to advance financing agreements shall become and remain the sole property of the City pursuant to the advance financing agreement.

Section 14. Waiver of Claims. No developer shall have any claim against the City in the event this Ordinance is, for any reason, found invalid or unlawful. An application for advance financing shall constitute a waiver of such claims.

Section 15. [Severability].

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Passed by the council December 2, 2004 and approved by the mayor  
December 3, 2004.