

ORDINANCE NO. 903

***AN ORDINANCE FOR THE CITY OF CANBY, COUNTY
OF CLACKAMAS, OREGON, AMENDING TITLE 4 OF
THE CITY CODE.***

WHEREAS, it has been determined that changes are needed to amend or clarify the wording and standards of Title 4 of the Canby Municipal Code; and

WHEREAS, after thorough study and consideration, the Planning Commission made appropriate changes to the wording of the proposal to assure that the public interest would be best served by this Ordinance; and

WHEREAS, the Planning Commission, by unanimous vote, recommended that City Council approve the proposed amendments; and

WHEREAS, City Council, after concluding a public hearing and review of the proposal of the Canby Planning Commission regarding the subject amendment, concluded that the amendment is appropriate;

NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Amend Title 4, Chapter 4.12, as follows:

Chapter 4.12

ADVANCE FINANCED PUBLIC IMPROVEMENTS

Sections:

4.12.010	Definitions
4.12.020	Purpose
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4.12.080	Advance financed reimbursement
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4.12.110	Public improvements
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4.12.130	Severability

4.12.010 Definitions.

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

- A. "Advance financing" means a developer's or City's payment for the installation of one or more public improvements installed pursuant to this chapter which benefiting property owners may utilize upon reimbursing a proportional share of the cost of such improvement.
- B. "Advance financing agreement" means an agreement between a developer and the City, as authorized by the Council, and executed by the City Administrator, which agreement provides for the installation of and payment for advance financed public improvements, and may, in such agreement, require such guarantee or guarantees as the City deems best to protect the public and benefiting property owners, and may make such other provisions as the Council determines necessary and proper.
- C. "Advance financing resolution" means a resolution passed by the Council and executed by the mayor designating a public improvement to be an advance financed public improvement and containing provisions for financial reimbursement by benefiting property owners who eventually utilize the improvement and such other provisions as determined in the best interest of the public by the Council.

- D. "Benefiting property owner" means the fee holder of record of the legal title to real property which, by virtue of installation of an advance financed public improvement, may be served, all or in part, by the same. Where such real property is being purchased under a recorded land sales contract, then such purchasers shall also be deemed owners.
- E. "City" means the City of Canby, Oregon.
- F. "Council" means the Council of the City of Canby, Oregon.
- G. "Developer" means the City, an individual, a partnership, a joint venture, a corporation, a subdivider, a partitioner of land or any other entity, without limitation, who will bear, under the terms of this chapter, the expense of construction, purchase, installation, or other creation of a public improvement.
- H. "Proportional share" means the amount of the advance financed reimbursement due from the benefiting property owner calculated in accordance with Section 4.12.080(B).
- I. "Public improvement" means the following:
 - 1. 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;
 - 2. The construction of sidewalks;
 - 3. The construction or upgrading of any sanitary or storm sewer;
 - 4. Any other public improvement authorized by the Council. (Ord. 737 § 1, 1983, amended 1994)

4.12.020 Purpose.

The purpose of this chapter is to ensure orderly new development by providing methods to finance necessary public improvements so that these necessary public improvements are installed concurrent with, or before, the new development occurs; to allow the City to require that new development pay the installation cost of these necessary public improvements; to assure that these necessary public improvements are installed in accordance with adopted public facilities plans; and to reimburse developers and/or the City for a share of costs incurred if a development or improvement provides access to public improvements for other benefiting property owners. (Ord. 737 § 2, 1983, amended 1994)

4.12.022 Applicability

In accordance with Section 16.06.120(B) of the Land Development and Planning Ordinance, the Planning Commission may condition approval of subdivisions, land partitions, and conditional use permits to require that the applicant construct necessary public improvements for the development. When the development is to occur at locations where approved master planning documents show new public improvements are necessary, the Planning Commission may condition approval of subdivisions, land partitions, and conditional use permits to require that the applicant enter into an advance financing agreement when the Commission deems such an agreement will best protect the public and promote the general welfare of the City. The applicant, at his or her option, may alternatively elect to be reimbursed by negotiating with the public service provider for reimbursement of oversized public improvements, where provisions for such negotiations exist; or by completing the public improvement without reimbursement; or by a combination of methods.

In accordance with Section 4.12.020, the City Council may determine that an advance financed public improvement will best protect the public and promote the general welfare of the City by ensuring orderly new development. In the absence of a development application, the Council may, by motion, designate the City or other public entity as the developer and direct the City Administrator to prepare an advance financing application.

4.12.030 Receipt of application.

The Council will receive applications, accompanied by an application fee of one hundred fifty (\$150.00) dollars or such other amount that the Council may, from time to time, set by resolution, for advance financed public improvements, and submit such applications to the public works department. The fee will be applied against the cost of administrative analysis of the proposed advance financed public improvements for the cost of notifying the property owners, and for recording cost and the like. When the City, or other public entity, is the developer, the Council shall, by motion, direct the City Administrator to submit the application to the public works department without fee. Applications for advance financed public improvements are expected to be submitted and approved prior to start of work; however, applications will be accepted for a period of six months after start of work for the public improvement. (Ord. 737 § 3, 1983, amended 1994)

4.12.040 City staff analysis.

Upon receipt of the advance financed public improvements application, the public works department shall make an analysis of the advance financed public improvements proposal and shall prepare a report to be submitted to the City Administrator for Council review and discussion and public hearing. Such report shall include a map showing the location and area of all benefiting properties. The report shall also include the City engineer's estimate of the total cost of the advance financed public improvement. (Ord. 737 § 4, 1983, amended 1994)

4.12.050 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 and ask questions 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 Council has the sole discretion after the public hearing to decide whether or not an advance financing resolution shall be passed. (Ord. 737 § 5, 1983, amended 1994)

4.12.060 Notification.

Not less than ten nor more than thirty days prior to any public hearing being held pursuant to this chapter, the developer, all benefiting property owners, and the general public shall be notified of such hearing and the purpose thereof. Public notice shall be accomplished by a written notice posted at City Hall and such other conspicuous locations as the Council may determine to be appropriate, and by a written notice published in a newspaper of general circulation in the community, once in either of the two consecutive weeks prior to the hearing. Notification of benefiting property owners shall also be accomplished by regular mail, or by personal service. If notification is accomplished by mail, notice shall be made on the date that the letter of notification is posted. Failure of any owner to be so notified shall not invalidate or otherwise affect any advance financing resolution or the Council's action to approve or not to approve the same. (Ord. 737 § 6, 1983, amended, 1994)

4.12.070 Advance financing resolutions and agreements.

After the public hearing, held pursuant to Section 4.12.050, if the Council desires to proceed with advance financed public improvement, it shall pass an advance financing resolution accordingly. The resolution shall designate the proposed improvement as an advance financed public improvement and provide for advance financed reimbursement by benefiting property owners pursuant to this chapter. When the developer is a private developer, the advance financing resolution shall instruct the City Administrator to enter into an agreement between the developer and the City pertaining to the advance financed public improvement, and may, in such agreement, require such guarantee or guarantees as the City deems best to protect the public, benefiting property owners, and may make such other provisions as the Council determines necessary and proper. (Ord. 737 § 7, 1983, amended 1994)

4.12.080 Advance financed reimbursement.

- A. Advance Financed Reimbursement Imposed. An advance financed reimbursement is imposed on all benefiting property owners at such time as the owners apply for connection to the advance financed public improvement, or apply for building permits for projects that utilize an advance financed public improvement.

B. Rates

Benefiting property owners shall pay advance financed reimbursement calculated as follows:

- If the advance financed public improvement was completed by a private developer, the reimbursement shall be the total actual cost of the improvement, increased by seven (7) percent annual simple interest, or such other interest rate as the Council may, from time to time, set by resolution, multiplied by the fraction of area owned by the benefitting property owner of the total area of all the benefitting property owners;
- If the advance financed public improvement was completed by a public agency, the reimbursement to the public agency shall be the total cost of the improvement increased by the same interest rate, including costs, as the public agency pays to finance construction, multiplied by the fraction of area owned by the benefitting property owner of the total area of all the benefitting property owners;
- If the advance financed public improvement was completed without the issuance of debt by the public agency, the reimbursement to the public agency shall be to the total cost of the improvement increased by the current interest rate private developers receive, as set forth above, multiplied by the fraction of area owned by the benefitting property owner of the total area of all the benefitting property owners.

If inequities are created through the strict implementation of the above formulas, the Council may modify its impact on a case-by-case basis.

C. Collection.

1. The advance financed reimbursement is immediately due and payable by benefiting property owners upon their application for connection to an advance financed public improvement or any building permit the result of which will utilize any advance financed public improvement. If connection is made or construction commenced without the above-mentioned permits then the advance financed reimbursement is immediately due and payable upon the earliest date that any such permit was required. No permit for connection or construction shall be issued until the advance financed reimbursement is paid in full or otherwise processed in accordance with the terms of paragraph 2 of this subsection C. Whenever the full and correct advance financed reimbursement is due and has not been paid and collected for any reason, the City Administrator 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 benefiting property owners. The City Council, by motion, shall then set a public hearing and shall direct the City Administrator to give notice of the hearing to each of those benefiting property owners, together with a copy of the City Administrator'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's report; and if it finds that any reimbursement is unpaid and uncollected, the Council, by motion, may direct the City recorder to docket the unpaid and uncollected reimbursement in the City record of liens. Upon completion of the

docketing, 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 benefiting property owners. The lien shall be enforced in the manner provided by Oregon Revised Statutes Chapter 223.

2. Whenever an advance financed reimbursement is due and collectable, the benefiting property owner may apply, upon forms provided by the City Administrator, 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 equal semi-annual installments including interest at the current legal rate. The applicant must provide a certificate from a licensed title insurance company showing the identity and amount of all other liens already 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 shall compute the amount of the advance financed reimbursement, the date upon which the reimbursement is due, the name or names of the applicant/owners and the description of the property; and upon receiving that report, the City Recorder shall docket the lien in the City docket of liens. From the time that docketing 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 advance financed public improvements. That lien shall be enforced in the manner provided in Oregon Revised Statutes Chapter 223. (Ord. 737 § 8, 1983, amended 1994)

4.12.090 Disposition of advance financed reimbursements.

Developers shall receive advance financed reimbursement collected by the City pertaining to their advance financed public improvements. Such reimbursement shall be delivered to the developer for a period of ten years from the date the applicable advance financing agreement has been executed. In addition, any developer, or said developer's heirs, successors or assigns, may apply at five-year intervals for two five-year extensions beyond the initial ten-year period. Such reimbursement will be made by the City within ninety days of receipt of the advance financed reimbursements. Advance financed reimbursements not paid the developer under the terms of this chapter shall be retained by the City to be used for related system improvements as authorized from time to time by the Council. (Ord. 737 § 9, 1983, amended 1994)

4.12.100 Recording.

All advance financing resolutions shall be recorded by the City in the deed records of Clackamas County. Such resolution shall identify full legal description of the benefiting properties. Failure to make such recording shall not affect the legality of an advance financing resolution or agreement. (Ord. 737 § 10, 1983, amended 1994)

4.12.110 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 agreements, and advance financed reimbursement, plus interest, not paid to the developer during the ten-year period, or any extension or extensions thereof, as set forth in Section 4.12.080, shall be paid to the City to be used for related system improvement as authorized from time to time by the Council. (Ord. 737 § 11, 1983, amended 1994)


4.12.120 Multiple public improvements.

More than one public improvement may be the subject of an advance financing agreement or resolution. (Ord. 737 § 12, 1983)

4.12.130 Severability

Invalidity of a section or part of a section of this Ordinance shall not affect the validity of the remaining sections or parts of sections.

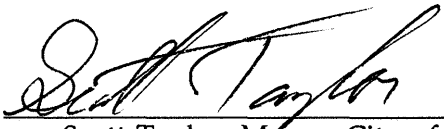
SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, November 17, 1993, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 19, 1994, commencing at the hour of 7:30 p.m., in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.



Marilyn K. Perkett, City Recorder

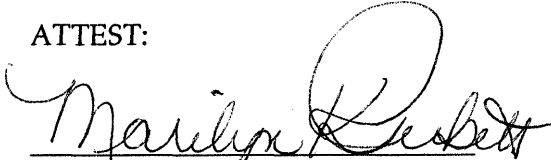
PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of January, 1994, by the following vote:

YEAS 6 NAYS 0



Scott Taylor, Mayor, City of Canby

ATTEST:



Marilyn K. Perkett
City Recorder