

ORDINANCE NO. 737

AN ORDINANCE PROVIDING FOR ADVANCE FINANCING  
OF PUBLIC IMPROVEMENTS

THE CITY OF CANBY, OREGON HEREBY ORDAINS:

Section 1. 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.

a. "Advance Financing" means a developer's or city'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.

b. "Advance Financing Agreement" means an agreement between a private 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 which agreement contains improvement guarantees, provisions for reimbursement by the intervening and future property owners who may eventually utilize such improvement, inspection guarantees, and the like, as determined in the best interest of the public by the Council.

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 intervening and future property owners who eventually utilize the improvement and such other provisions as determined in the best interest of the public by the Council.

d. "City" means the City of Canby, Oregon.

e. "Council" means the Council of the City of Canby, Oregon.

f. "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 ordinance, the expense of construction, purchase, installation, or other creation of a public improvement.

g. "Development" means that real property being developed by the developer and for which property the advance financing resolution is passed. Said property is also known as "developer".

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

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

j. "Owner" means the fee holder of record of the legal title to the real property in question. Where such real property is being purchased under a recorded land sales contract, then such purchasers shall also be deemed owners.

k. "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) Those "local improvements" as provided in ORS 223.387 as now written or hereafter amended.

(5) Any other public improvement authorized by the Council.

Section 2. Statement of Purpose: The purpose of this Ordinance is to provide a method of financial reimbursement to private developers and/or the City of Canby for a share of costs incurred if a development or improvement provides access to public improvements that will benefit intervening and/or future property owners.

Section 3. Receipt of Application: The Council will receive applications for advance financing from private developer, which applications shall be submitted to the Public Works Department and shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00). Said fee will be applied against the cost of administrative analysis of the proposed advance financing project for the cost of notifying the property owners and for recording costs and the like.

When the City is the developer, the Council shall by motion direct the City Administrator to submit the application to the Public Works Department without fee.

Section 4. City Staff Analysis: Upon receipt of the advance financing application, the Public Works Department shall make an analysis of the advance financing 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 front footage of the development and all future properties. The report shall also include the city engineer's estimate of the total cost of the advance financed public improvement.

Section 5. Public Hearing: Within a reasonable time after the Public Works Department has completed their 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.

Section 6. Notification: Not less than ten (10) nor more than thirty (30) days prior to any public hearing being held pursuant to this Ordinance, the developer and all intervening and future property owners shall be notified of such 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 made on the date that said 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.

Section 7. Advance Financing Resolutions and Agreements. After the public hearing, held pursuant to Section 4, if the Council desires to proceed with advance financed public improvement, it shall pass an advance financed 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. 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 improvement, and may, in such agreement, require such guarantee or guarantees as the City deems best to protect the public, intervening and future property owners, and may make such other provisions as the Council determines necessary and proper.

Section 8. Advance Finance Reimbursement:

a. Advance Financed Reimbursement Imposed: An advance financed reimbursement is imposed on all intervening and future property owners at such time as said owners apply for connection to advance financed sewer, or apply for building permits for projects that utilize an advance financed public improvement.

b. Rates:

(1) Intervening Property Owners:

(a) When there are not future property owners involved, the intervening property owner shall pay advance financed reimbursement calculated as follows:

The total actual cost of the advance financed public improvement, increased by 9% annual simple interest, or such other percentage that the Council may, from time to time, set by resolution, multiplied by a percentage of front footage owned by intervening property owner of the total front footage of the advance financed public improvement.

(b) When the advance financed improvement includes future property owners, then the above calculation will be the same except that the total cost of the improvement shall be reduced by that percentage which relates to the cost of the oversizing of the advance financed improvement.

(c) In both subparagraphs (a) and (b) above, 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. If inequities are created through the strict implementations of the above formulas, the Council will modify its impact on a case by case basis.

(2) Future Property Owners: The advance financed reimbursement imposed on future property owners shall be calculated as follows: The dollar amount of the total cost of the advance financed public improvement that pertains to the oversizing of said public improvement shall be increased by 9% simple interest, or such other interest rate as the Council may, from time to time, establish by resolution. Said amount shall then be multiplied by a percentage equal to the future property owner's percentage of ownership of the total acreage of all future proportions. If inequities are created through the strict implementation of this formula, the Council will modify its impact on a case by case basis.

c. Collection:

(1) The 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 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 into the terms of sub-section (2) below. Whenever the full and correct advance financed reimbursement 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 intervening or future property owners. The City Council, by motion, shall then set a public hearing and shall direct the City Administrator to give notice of that hearing to each of those intervening and future 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; and 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 intervening or future property owners. The lien shall be enforced in the manner provided by ORS Chapter 223.

(2) Whenever an advance financed reimbursement is due and collectable, the intervening or future 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 (20) equal semi-annual installments including interest. 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; and 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 Local Improvement Districts, which interest shall be the full and only compensation to the City for its administrative costs. That lien shall be enforced in the manner provided in ORS Chapter 223.

Section 9. Disposition of Advance Financed Reimbursements: Private developers shall receive a portion of advance financed reimbursement collected by the City pertaining to their advance financed public improvements. Such portions shall be delivered to the private developer for a period of ten (10) years from and after the date the applicable advance financing agreement has been executed. In addition, any private 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. The portion of advance financed reimbursements to be paid to private developer shall be calculated by multiplying the amount of advance financed reimbursement received by the City by a percentage equal to the percentage of the development owned by the developer at the time the advance financed reimbursement was paid. Such payments will be made by the City within ninety (90) days of receipt of the advance financed reimbursements, and all portions of the advance financed reimbursements not paid 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.

Section 10. Recording: All Advance Financing Resolutions shall be recorded by the City in the deed records of Clackamas County, Oregon. Such resolution shall identify full legal description of the development, intervening properties, and future properties. Failure to make such recording shall not affect the legality of an advance financing resolution or agreement.

Section 11. Public Improvements: Public improvements installed pursuant to advance financing agreement shall become and remain the sole property of the City pursuant to the advance financing agreement, and advance financed reimbursements, plus interest, not paid to the owners of the development during the said ten year period, or any extension or extensions thereof, as set forth in Section 8 hereinabove shall be paid to the City to be used for related system improvement as authorized from time to time by the Council.

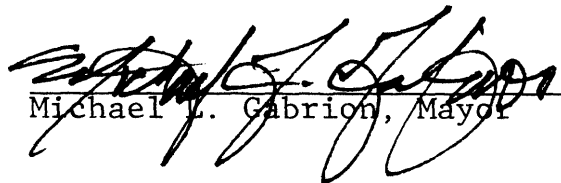
Section 12. Multiple Public Improvements: More than one public improvement may be the subject of an advance financing agreement or resolution.

Section 13. Severability: If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in effect. This ordinance does not affect any advance financing agreement heretofore entered into by the City, and such agreements shall remain in full force and effect pursuant to the terms thereof.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on the 21st day of September, 1983; ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on the 19th day of October, 1983, commencing at the hour of 7:30 o'clock P.M. at the Council's regular meeting chambers at the Canby City Hall, in Canby, Oregon.

  
Marilyn K. Perkett, Deputy Recorder

Passed on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of October, 1983 by the following vote: YEAS 6 NAYS 0

  
Michael L. Gabriion, Mayor

ATTEST:

  
Marilyn K. Perkett, Deputy Recorder