

Chapter 3

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Chapter 3

PUBLIC IMPROVEMENTS

SPECIAL ASSESSMENTS

3.000 Council Authority--Petition by Owners.

(1) Whenever the council deems it expedient to construct, alter, repair, improve, widen or extend any street, alley, sidewalk, parking, curbing or any part thereof, or to construct, alter or install street lights, or to construct, improve, or repair any sanitary or storm sewer or water line or any part thereof, or to acquire, establish, construct or reconstruct any off-street motor vehicle parking facilities; or to construct, reconstruct or repair any flood-control facility, or to construct, reconstruct, repair, or equip a park, playground or neighborhood recreation facility, or any local improvement for which an assessment may be made on the property specially benefitted, for which it is anticipated that special assessments will be levied, it shall by motion direct the city engineer or engineer retained by the city to make an investigation of such project and to submit a written report, containing the information hereinafter specified.

(2) Whenever the owners of at least 60 percent of the front footage of the abutting property in any area consisting of at least 300 feet of road, or the owners of at least 60 percent of the property to be especially benefitted desire to form themselves into an improvement district for the purpose of accomplishing any of the objectives listed in subsection (1) of this section, they may by written petition request the council to direct the city engineer to submit a report as specified in subsection (1) of this section. The council, if satisfied the petition

is signed by the owners of at least 60 percent of the front footage of the abutting property or 60 percent of the property to be especially benefitted within the district specified in the petition, may pass the requested motion. The petition referred to herein must be filed with the city manager not less than ten days prior to any regular meeting of the council.

3.005 Report of Engineer. The city engineer or the engineer retained by the city shall file the report with the city manager within the time specified by the council. At the discretion of the council the time for filing the report may be extended. The report shall contain the following:

(1) A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be included in the proposed improvement district;

(2) Estimated cost of the work to be done, including any legal, administrative and engineering costs attributable thereto; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the engineer may adopt the estimates of such agency;

(3) An analysis of the extent to which the proposed improvement benefits the entire city and a recommendation as to the method of determining the project costs that will be borne by the entire city;

(4) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefitted by the improvement, with the names of the record owners thereof and, when readily available,

the names of the contract purchasers thereof;

(5) A statement of outstanding assessments against property to be assessed.

3.010 Action on Engineer's Report.

After the engineer's report has been filed with the city manager, the council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvement, or it may abandon the improvement.

3.015 Resolution and Notice of Hearing.

After approving the engineer's report as submitted or modified, the council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement and shall direct the city manager to give notice of such improvement by posting at the city hall and at two places within the benefitted area, and by mailing copies of such notice to the owners to be assessed for the costs of such improvement. The notice shall be mailed and posted, at least ten days prior to the public hearing on the proposed improvement. Said notice shall contain the following:

(1) A statement describing the proposed improvements, the area to be served, and the intention of the council to make such an improvement;

(2) The place and times at which the engineer's report on the proposed improvement may be examined;

(3) The date, time, and place of the public hearing on the proposed improvement;

(4) The procedure for presenting objections and remonstrances;

(5) The estimated total cost of that portion of the project to be financed by assessments to benefitted properties.

3.020 Hearing and Action on Improvement.

If, prior to or during the hearing, written objections are received from owners representing two-thirds of the area to be assessed, the improvement proceedings shall be abandoned and shall not be subject to a further hearing for at least six months, unless the improvement is a sidewalk or an improvement unanimously declared by the council to be needed at once because of an emergency. The council, after receiving objections from owners representing not more than two-thirds of the area to be assessed may adopt or amend the engineer's report and, as amended, adopt the same by resolution. Having by resolution created a local improvement district of the area to be benefitted by the proposed improvement, the council shall direct, in said resolution or by subsequent action, the city engineer or an engineer retained by the city to prepare detailed plans, specifications, and cost estimates for the proposed improvement.

3.025 Advertisement and Contract.

(1) The council shall review the final plans, specifications and cost estimate and, finding same to be consistent with the preliminary plans and cost estimates adopted in the engineer's report, shall by resolution adopt the final plans and specifications, and direct city personnel to construct the proposed improvements or direct the city manager to advertise for bids on the project according to the final plans and specifications. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the city.

(2) If the council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is fifteen percent in

excess of the engineer's estimate, it shall provide for holding a hearing of objections to proceeding with the improvement on the basis of such bid, and it shall direct the city manager to publish one notice thereof in a newspaper of general circulation in the city. Notice shall state the purpose, date, time, and place of said hearing. After the hearing the council shall determine whether said bid shall be accepted or rejected.

3.030 Preliminary Assessment. After the council by resolution has created a local improvement district, the council shall direct the city manager to determine the proposed cost to each property benefitted by the improvement. If assessment is to be made prior to construction of the improvement said cost determination shall be based upon the estimates contained in the engineer's report and said determination of proposed individual and specific property assessments shall be known as the preliminary preassessment roll. If assessment is to be made following construction of the improvement said determination shall be based upon actual construction costs and related costs and said determination of proposed individual and specific property assessment shall be known as the preliminary assessment roll. Notice of such proposed assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of assessment proposed on that property and shall fix a date by which time objections shall be filed with the city manager. Such date shall be at least fourteen days from the date of the mailing or personal delivery of the notices. Any objection filed with the city manager must state the grounds of the objection.

3.035 Final Assessment.

(1) The council shall consider all objections to the preliminary assessment roll which are timely filed with the city manager, and after such consideration the council shall, by resolution levy, or amend and levy the proposed assessments presented by the city manager. Said assessments to be then known as either final assessment roll or final preassessment roll. Promptly after passage of the resolution levying the final assessments, the city manager shall send by registered or certified mail a notice of final assessment to all owners of property being assessed.

(2) The notice of final assessment shall contain the following:

- (a) A brief description of the improvement;
- (b) The procedure for cash payment or for applying for financing;
- (c) The final assessment levied on property owned by the recipient.

3.040 Method of Assessment.

The council in adopting a method of assessment of the costs of the improvement may:

- (1) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;
- (2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefitted;
- (3) Authorize payment by the city of all, or any part of, the cost of any such improvement, when in the opinion of the council the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefitted property of the costs of the improvement.

3.045 Alternative Methods of Financing.

Nothing contained in sections 3.000 to 3.105 shall preclude the council from using any other available means of financing improvements, including federal or state grants in aid, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the council may, in its discretion levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement according to the procedures provided in sections 3.000 to 3.105.

3.050 Remedies.

Subject to the curative provisions of section 3.080 and the rights of the city to reassess as provided in section 3.085, proceedings for writs of review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein. A property owner who has filed written objections with the city manager prior to the consideration by the city council of objections to the preliminary assessments, may have the right to apply for a writ of review based upon the city council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner if the facts supporting such claim have been specifically set forth in the written objections. A property owner who has filed written objection with the city manager prior to the consideration by the city council of objections to the preliminary assessments, may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement has not been sent to the owner and if the owner did not have actual knowledge of the proposed improvement prior to the con-

sideration by the city council of objections to the preliminary assessments, then the owner may file written objections alleging lack of jurisdiction with the city manager within thirty days after receiving notice or knowledge of the improvement. No provision of this section shall be construed so as to lengthen any period of redemption or so as to affect the running of any statute of limitations. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the city council to remedy or cure the alleged errors or defects.

3.055 Lien Records and Foreclosure Proceedings.

After passage of the final assessment resolution by the council, the city manager shall enter in the docket of city liens, a statement of the amounts assessed upon each particular lot, parcel of land or portion thereof, together with a description of the improvement, the name of the owners and the date of the assessment resolution. Upon entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land or portions thereof, which have been assessed for such improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at the rate of not to exceed ten percent per annum until paid on all amounts not paid within 30 days from the date of the assessment resolution; and, after expiration of 30 days from the date of such assessment resolution of the city, provided the owner has not applied for bancroft or other city approved financing, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state of Oregon; provided, however, that the

city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state of Oregon to redeem such property.

3.060 Errors in Assessment Calculations.

Claimed errors in the calculation of assessments shall be called to the attention of the city manager, who shall determine whether there has been an error in fact. If the city manager shall find there has been an error in fact, he shall recommend to the council an amendment to the assessment resolution to correct such error, and upon enactment of such amendment, the city manager shall make the necessary correction in the docket of city liens and send a correct notice of assessment by registered or certified mail.

3.065 Deficit Assessment. In the event that an assessment is made before the total cost of the improvement is ascertained, and if it is found the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare such deficit and prepare a proposed deficit assessment. The council shall set a time for a hearing of objections to such deficit assessment and shall direct the city manager to publish one notice at least ten days prior to the hearing in a newspaper of general circulation in the city. After such hearing the council shall make a just and equitable deficit assessment by resolution, which shall be entered in the docket of city liens as provided by sections 3.000 to 3.105, and notices of the deficit assessment shall be posted and mailed and the collection of the assessment shall be

made in accordance with applicable sections of sections 3.000 to 3.105.

3.070 Rebates. If, upon the completion of the improvement project, it is found the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, 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 assessment. In the event any assessment has been paid, the person who paid the same, or his legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.

3.075 Abandonment of Proceedings.

The council shall have full power and authority to abandon and rescind proceedings for improvements made under sections 3.000 to 3.105 at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the person paying the same, his assigns or legal representatives.

3.080 Curative Provisions.

No improvement assessment shall be rendered invalid by reason of a failure of the engineer's report to contain all of the information required by section 3.005, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment resolution, 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 owner of any property as required by sections 3.000 to 3.100, 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 to the council that the assessment is unfair or unjust in its effect upon the person complaining; and the council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

3.085 Reassessment. When any assessment, deficit or reassessment for any improvement which has been made by the city has been, or shall 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 council is in doubt as to the validity of such assessment, deficit assessment, or reassessment, or any part thereof, then the council may make a reassessment in the manner provided by the laws of the state.

3.090 Bancroft Bonding Act.

The provisions of ORS 223.205 through 223.295, commonly known as the Bancroft Bonding Act, are adopted and made a part hereof by reference.

3.095 Mailing of Notices. A notice shall be deemed mailed when it is sent to the owner's address shown in the county assessor's records, to the owner's last address known to the city, or to the owner at "West Linn, Oregon."

3.100 Segregation of Assessments-- Fees. Whenever an application has been made under the provisions of the Bancroft Bonding Act as adopted in section 3.090 and the application has been accepted

and the payment of the assessment has been in fact financed by such procedure, the lien of such assessment may be segregated upon the following terms and conditions:

(1) The property for which the segregation is to be made shall have been assessed as a unit and entered accordingly in the docket of liens.

(2) There shall be no delinquent installments of principal or interest on the assessment of the entire parcel.

(3) Written application shall be made to the city in such form as may be required, and such applications shall be accompanied by the fees established as provided in this section. The written application must be submitted by the owner, mortgagee, or lienholder of a parcel of real property that was formed from the partition or other division of the larger tract of real property against which the assessment was originally levied. No apportionment shall be granted unless the applicant filed a true copy of the deed, mortgage, or instrument creating the new parcel or parcels.

(4) Apportionment of the assessment shall be made by the city manager and approved by resolution of the city council. In accomplishing apportionment, the installments remaining unpaid shall be prorated among the smaller parcels so that each parcel shall be charged with the percentage of the remaining installment payments equal to the percentage of the unpaid assessment charged to the parcel upon apportionment.

(5) In order to help defray the costs of investigation, preparing legal descriptions, calculating an equitable division of the assessment and making lien docket entries, the city council may by resolution establish and from time to time amend a schedule of fees to be paid with any application filed under this section. Such fees shall not be refundable if the application is disapproved or

the applicant withdraws his application.

3.105 Deferral of Special Assessments for Local Improvements.

Certain persons may be eligible for deferral of special assessments for local improvements pursuant to ORS 311.702 through 311.735. The City will use the provisions of ORS 311.702 through 311.735 to process any request for deferral of special assessments for local improvements.

[Section 3.105 added by Ordinance No. 1441 approved August 23, 1999.]

ADVANCE FINANCING OF PUBLIC IMPROVEMENTS

3.150 Definitions. The following terms are definitions for the purposes of sections 3.150 to 3.210 and mean as follows:

Advance Financing. Payment by a developer for installation of one or more public improvements installed pursuant to sections 3.150 to 3.210 which intervening property owners may utilize upon reimbursing a proportional share of the cost of such public improvement to the developer.

Advance Financing Agreement. The agreement between a developer and the city which is authorized by the city council and executed by the city manager, providing for the installation of and payment for advance financed public improvements.

Advance Financing Reimbursement. The payment made by an intervening property owner to the city for utilization of an advance financed public improvement.

Advance Financing Resolution. A resolution adopted by the city council which designates a public improvement as an advance financed public improvement and which

contains provisions for an advanced financing agreement between the developer and the city.

Developer. The city, another municipal corporation, an individual, a partnership, a joint venture, a corporation, or any other entity, without limitation, who bears the expense of construction, purchase or installation of an advance financed public improvement.

Development. The real property owned by the developer.

Intervening property. The real property contiguous to or served by an advance financed public improvement but not including the development or public rights-of-way.

Owner. The fee holder of record of the legal title to an intervening property or the purchaser under a recorded land sales contract.

Public improvement. Any construction, reconstruction or upgrading of a water, sanitary sewer or storm sewer line, public street (including bicycle lanes) or sidewalk or undergrounding of public utilities.

Utilize. To apply for a building permit which will use or increase the use of an advance financed public improvement, to connect to an advance financed public improvement, or to otherwise increase the use of an advance financed public improvement.

"Increase the use" means:

(1) For sanitary sewer or storm sewer lines: to make a physical change requiring a building or development permit on the intervening property which increases the volume discharged into the line.

(2) For water lines: to make a physical change requiring a building or development permit on the intervening property which increases the amount of water used.

(3) For public streets: to make a physical change requiring a building or development permit on the intervening property

which increases the trips on the street or creates a new entrance onto the street.

[Section 3.150 amended by Ordinance No. 1446 approved April 24, 2000.]

3.155 Application.

(1) An application shall be required from a developer for city council approval of advance financing of public improvements. The application must be submitted before installation of the advance financed public improvement and no later than submission of the plans for the public improvement to be installed. The application shall be accompanied by a fee established by resolution sufficient to cover the cost of administrative review and notice pursuant to sections 3.150 to 3.210.

(2) The application shall include the following:

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

(b) A map showing intervening properties, both front footage total area computation of intervening properties, the development, and a list of intervening property owners with current mailing addresses.

(c) The estimated date of completed installation.

(d) The estimated cost of the public improvement.

(e) The estimated reimbursement amount from each intervening property.

(f) An acknowledgment by the developer that the application will be automatically withdrawn if the public improvements are tendered to and accepted by the city before the advance financing resolution is

adopted and the advance financing agreement is entered into.

[Section 3.155 amended by Ordinance No. 1446 approved April 24, 2000.]

3.160 Report.

Upon receiving the application, the city manager shall review the advance financing proposal and submit a report to the city council for its review and discussion at a public hearing. The public hearing shall be scheduled no more than 90 days from the date a completed application with all required information is received. The hearing shall not be held and the application shall be deemed withdrawn if the public improvements are tendered to and accepted by the city before the hearing.

The report shall include a map showing the location and area of intervening properties and of the development. The report shall also include the city engineer's analysis of whether the estimated cost of the public improvements is reasonable, and the estimated advance financed reimbursement due from each intervening property owner.

[Section 3.160 amended by Ordinance No. 1446 approved April 24, 2000.]

3.165 Public Hearing.

Any person has the right to comment on the proposed advance financed public improvement and proposed reimbursement at the informational public hearing. Because an advance financed public improvement does not result in an assessment or lien, 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 an advance financing resolution shall be adopted. The public

hearing may not be continued past the date of acceptance by the city of the advance financed improvement.

[Section 3.165 amended by Ordinance No. 1446 approved April 24, 2000.]

3.170 Notice.

Notice of the application will be provided to the applicant and all intervening property owners at least 10 days before the hearing. Notice is effective when mailed. Failure of the developer or any intervening property owner to be sent or receive notice shall not invalidate or otherwise affect any advance financing resolution or the city council's action.

[Section 3.170 amended by Ordinance No. 1446 approved April 24, 2000.]

3.175 Advance Financing Resolutions and Agreements.

After the public hearing pursuant to Section 3.165, if the city council desires to proceed with an advance financed public improvement, it shall pass an advance financing resolution. The resolution shall designate the advance financed improvements and provide for advance financed reimbursement by intervening property owners pursuant to sections 3.150 to 3.210. The resolution shall state the methodology for determining the amount of advance financed reimbursements. The city shall adopt a methodology that requires payment in proportion to geographic area, taking into account the geographic area of all intervening properties and the development, unless the geographic area methodology is inequitable. If the final costs of the advance financed improvements are known at the time of the resolution, the resolution shall set forth those costs. The resolution shall acknowledge any payment by an intervening property owner or agreement between

intervening property owner and development that the city has notice of at the time the resolution is adopted. When the developer is other than the City, the advance financing resolution shall instruct the city manager to enter into an agreement with the developer pertaining to the advance financed public improvements. The agreement shall be signed by both parties before the City accepts the advance financed improvements. The agreement shall contain the following provisions:

(1) The advance financed public improvements shall meet all applicable city standards.

(2) The total advance financed reimbursement shall not exceed the actual cost of public improvements.

(3) The developer shall guarantee the advance financed public improvement for a period of 18 months from the date of acceptance by the City.

(4) The developer shall indemnify and hold harmless the City from any and all losses, claims, damage, judgments or other costs or expense associated with the advance financed resolution and agreement.

(5) The developer shall acknowledge that the City is not obligated to collect the advance financed reimbursement from intervening property owners.

(6) Other provisions as the city council determines necessary and proper to carry out the provisions of Section 3.150 to 3.210.

[Section 3.175 amended by Ordinance No. 1446 approved April 24, 2000.]

3.180 Notice of Adoption of Resolution.

The city shall notify all intervening property owners and the developer of the adoption of an advance financing resolution.

The notice shall be sent by first class mail and shall include a copy of the resolution, the date it was adopted, and a short explanation of sections 3.150 to 3.210. The city shall record a copy of the resolution in the County Clerk deed records for each intervening property.

[Section 3.180 amended by Ordinance No. 1446 approved April 24, 2000.]

3.182 Approval of Cost Amount.

If the full costs of the advance financed improvements are not known when the advance financing resolution is adopted, the developer shall provide the city and all intervening property owners notice of the full amount of the costs within 10 business days of completion of the advance financed public improvements. Any notice recipient may object to the cost by filing a written objection within 14 days with the City Manager. If no objections to the costs are received within 14 days of the notice, the costs as stated in the notice shall not be subject to challenge. If written objections are received, the amount of actual costs shall be determined by the city council after a public hearing.

[Section 3.182 added by Ordinance No. 1446 approved April 24, 2000.]

3.185 Advance Financed Reimbursement.

(1) An advance financed reimbursement shall be imposed on all intervening properties, at such time as an intervening property owner or agent, employee or independent contractor or the intervening property owner, utilizes the advance financed improvements.

(2) Reimbursement Rate. The intervening property owner shall be liable for advance financing reimbursement calculated as follows:

The intervening property's proportionate share, as determined in the advance financing resolution, of the actual cost of the advance financed public improvement, increased by the current Prime Rate annual simple interest upon the anniversary of execution of the agreement.

(3) Collection. The advance financed reimbursement is immediately due and payable to the city by intervening property owners upon utilization of an advance financed public improvement. If connection is made or construction commenced without required city permits, then the advance financed reimbursement is immediately due and payable upon the earliest date that any such permit was required. No city permit of any kind for the intervening property shall be issued until the advance financed reimbursement is paid in full. As an alternative to payment through the City, an intervening property owner may pay the developer directly, provided that both the intervening property owner and developer report the payment to the City.

(4) Public Hearing for Unpaid Advance Financed Reimbursement. Whenever the full advance financed reimbursement has not been paid and collected for any reason after it is due, the city manager shall report to the city council the amount of the uncollected reimbursement, the legal description of the intervening property on which the reimbursement is due, the date upon which the reimbursement was due and the intervening property owner's name or names. The city council shall then, by motion, set a public hearing date and direct the city manager to give notice of that hearing to each of the identified intervening property owners, together with a copy of the city manager's report concerning the unpaid advance financed reimbursement. Such notice may be

either by certified mail or personal service. At the public hearing, the city council may accept, reject or modify the city manager's report. If the city council accepts or rejects the city manager's report and determines that the advance financed reimbursement is due but has not been paid for whatever reason, the city may take any action including all legal or equitable means necessary to collect the unpaid amount. An unpaid advance financing reimbursement shall prohibit any issuance of permits by the city for the intervening property. [Section 3.185 amended by Ordinance No. 1446 approved April 24, 2000.]

3.190 Payment to Developer.

Developers shall receive all advance financed reimbursement collected by the city for their advance financed public improvements. Such reimbursement shall be delivered to the developer for a period of 10 years from and after the date the advance financing agreement has been executed. Such payments shall be made by the city within 90 days of receipt of the reimbursements.

3.195 Recording. The advance financing resolution and agreement shall be recorded by the city in the Deed Records of Clackamas County, Oregon. Failure to record the resolution and agreement shall not affect the legality of an advance financing resolution or agreement.

3.200 Public Improvements. Public improvements installed pursuant to advance financing agreements shall become and remain the sole property of the city.

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

3.210 Other Fees and Charges. The advance financing 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 3.210 replaced by wording in Ordinance No. 1480 approved January 9, 2002.]

WORK IN PUBLIC RIGHT-OF-WAY AND PUBLIC UTILITY EASEMENTS

3.250 City Approval Required.

(1) No person shall engage in any excavation, grading, surfacing, or paving operation or activity, or install, construct, or connect to any public sanitary sewer, storm sewer, water main or pipeline, or any other public utility or public improvement in the public right-of-way (ROW) or public utility easement (PUE) without first securing City authorization from the City Manager or City Engineer. All persons, other than the City or those working for or under contract with the City, must obtain a Public Works permit before engaging in any such activity. Any franchise utility whose franchise exempts the franchisee from obtaining a Public Works permit shall be exempt from the requirement to obtain a Public Works permit before engaging in any such activity but shall still be bound by the requirement of Section 3.285 (Traffic Control Plans and Open Trenches). All work within the ROW/PUE shall be consistent with engineering plans, profiles, specifications, and standards approved by the City Engineer in accordance with City of West Linn requirements.

(2) The City Manager or City

Engineer may deny an application for a Public Works permit if the application would result in development of additional street area and the development does not further the City's Transportation Plan, is not needed to improve traffic circulation within the City, or is otherwise not required by the public interest. The City Manager or City Engineer shall deny any permit application that is inconsistent with the City's public works standards or that results in permanent interference with the transportation system or the provision of public utilities.

[Section 3.250 amended by Ordinance No. 1505 adopted July 21, 2004.]

3.255 Fees, Deposits, Financial Guarantees, and Administrative Requirements.

(1) The standard fee for a Public Works ROW/PUE permit shall be set by resolution of the City Council and shall be due and payable at the time of the permit application. The fee shall be set in an amount to only cover the City's costs in processing the permit. Charges for administering the permit, plan review, inspection and other associated charges shall be billed at the current billing rate for the employee performing the work or the direct cost of the consultant if used.

(2) In addition to the permit fee, a deposit is required to cover the estimated costs of plan review and inspection of the work by the City to assure compliance with City standards and specifications. The City Engineer or designee shall set the deposit amount based on estimated construction costs. The City shall keep accurate records of the time and costs incurred in such review and inspections, and upon completion of the project, and its acceptance by the City, any amount remaining in the deposit shall be

refunded to the permittee. Any cost incurred by the City in excess of the amount of the deposit shall be billed to the permittee and shall be due and payable prior to approval and acceptance of the project by the City. Time spent in plan review and inspection shall be billed at the established hourly rate.

(3) If a person is required to construct public improvements as a condition of a land use approval, the applicant shall post a cash deposit, bond, or other financial guarantee, acceptable to the City, in the amount of 125% of the value of the proposed work in the ROW/PUE. The bond shall remain valid until the City accepts the work and the work is covered by a satisfactory financial guarantee, maintenance Bond, in the amount of 20% of the public improvements installed in the ROW/PUE for the maintenance period of 18 months from the date of acceptance by the City.

(4) A person obtaining a permit under this section must have and keep in full force and effect property damage and liability insurance in the amounts of \$100,000 property damage, and \$100,000/\$200,000 personal injury while performing any work in the ROW/PUE. Certificate shall be in a form acceptable to the City and such insurance shall be filed with the city at time of application.

(5) All permittees and their contractors shall comply with all applicable requirements of this code, including requirements imposed by 7.000 to 7.080 (pertaining to City Business Licenses).

[Section 3.255 amended by Ordinance No. 1505 adopted July 21, 2004.]

3.260 Standards.

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All street, sanitary sewer, storm sewer, water main and pipeline construction and any other construction within streets in the City shall be in accordance with the West Linn Design and Construction Manual or in accordance with any special provisions established by the City Engineer.
[Section 3.260 amended by Ordinance No. 1505 adopted July 21, 2004.]

3.265 Street Sections and Construction Details. Standard street sections and standard construction details shall be as specified in City's standard drawings. No deviation from these standard drawings will be allowed without written findings documenting the need and written approval of the deviation being granted by the City Engineer.
[Section 3.265 amended by Ordinance No. 1505 adopted July 21, 2004.]

3.270 Engineer's Approval in Phases. The City Engineer or his designee, prior to the placement or construction of any subsequent phase, layer, or course, shall approve each phase, layer, or course of work. Failure to comply with this section may be cause for requiring the removal and replacement of that phase, layer, or course which was placed without approval of the preceding course.
[Section 3.270 amended by Ordinance No. 1505 adopted July 21, 2004.]

3.275 Contractor--Appointment of Project Superintendent. A contractor shall employ competent and experienced workmen and foremen and for each project or contract shall designate a project superintendent who will be responsible for coordinating with the City on all aspects of the work.
[Section 3.275 amended by Ordinance No. 1505 adopted

July 21, 2004.]

3.280 Contractor--Submission of Plans. Projects consisting of single house connections will not normally require submission of plans and specifications but can be usually conveyed by a sketch. For more complex installations requiring plans and specifications:

A contractor, or the person, firm, or corporation employing the contractor, shall be responsible for the preparation of, and submission to the City for approval, all plans and specifications covering any work in any ROW/PUE.

These plans and specifications are to be prepared by, and bear the seal of, a professional engineer registered in the state of Oregon. This engineer or his duly authorized representative shall set all grade, line, and other control stakes.
[Section 3.280 amended by Ordinance No. 1505 adopted July 21, 2004.]

3.285 Traffic Control Plans and Open Trenches.

(1) No work in the public ROW will be authorized without first submitting and receiving approval from the City Engineer of a project traffic control plan.

(2) No trenches shall remain open in the ROW after normal working hours. Plating will be allowed for no longer than 24 hours. [Section 3.285 added by Ordinance No. 1505 adopted July 21, 2004.]

3.290 Unauthorized Work in the Right-of-Way. Any violation of Sections 3.250 through 3.285 is a Class A civil infraction. [Section 3.290 added by Ordinance No. 1505 adopted July 21, 2004.]

PUBLIC WORKS STANDARDS

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(STREET/UTILITY DESIGN AND CONSTRUCTION STANDARDS)

3.300 Public Works Standards.

(1) All public works shall be designed and constructed according to the City of West Linn Public Works Standards, a copy of which is on file at City Hall. The City of West Linn Public Works Standards may be amended as provided in subsections (2) and (3) of this section.

(2) The City Engineer may amend technical provisions and standards of the City of West Linn Public Works Standards. Public notice of technical amendments shall be posted in City Hall 30 days prior to the effective date of the amendments.

(3) All provisions of the City of West Linn Public Works Standards may be amended by resolution of the City Council upon recommendation by the City Engineer.

(4) The City Engineer is authorized to enforce all the provisions of the City of West Linn Public Works Standards. The City Engineer shall have the power to render written and oral interpretations and to adopt and enforce administrative procedures in order to clarify the application of the City of West Linn Public Works Standards. The City Engineer is authorized to issue Stop Work Orders as needed in the enforcement of these standards.

(5) Any violation of the City of West Linn Public Works Standards shall constitute a Class A civil infraction. Each day that a violation exists is a separate infraction. For purposes of this section, defects in design or construction that are corrected without delay and prior to acceptance of the public works by the City by the person responsible for the design or construction shall not constitute a violation.

(6) Any uncorrected violation of the City of West Linn Public Works Standards shall constitute a nuisance and may be abated as provided in sections 5.400 to 5.530.

[Ordinance No. 1238 adopted July 13, 1988. Section 3.300 amended by Ordinance No. 1449 adopted May 22, 2000.]

SIDEWALK MAINTENANCE

3.350 Definition of "Sidewalk."

"Sidewalk" means the part of the street right-of-way between the curblines or the lateral lines of a roadway and the adjacent property lines, and includes a culvert located in a part of the street.

3.355 Repair of Sidewalks. It is the duty of the owner of land abutting a sidewalk to maintain the sidewalk in good repair and safe condition.

3.360 Liability for Sidewalk Injuries.

(1) The owner of real property abutting a sidewalk is liable to any person injured because of failure by the owner to maintain the sidewalk in good repair or safe condition.

(2) If the city is required to pay damages for an injury to any person caused by the failure of an owner to maintain a sidewalk in good repair or safe condition, the owner shall reimburse the city for the amount of the damages thus paid, and for the attorney fees and costs of defending against the claim for damages. The city may maintain an action in court to enforce the provisions of this section.

3.365 Standards and Specifications.

Sidewalks shall be constructed, altered, and repaired in accordance with standards and specifications determined by the public works director.

3.370 Submission of Plans. No person shall construct, alter, or repair a sidewalk without first submitting the plans and specifications for the proposed work and obtaining a permit. The application for a permit shall be made to the city manager. The city manager may issue a permit for the proposed work upon finding that the plan conforms with the applicable standards and specifications.

3.375 Supervision of Work.

The construction, alteration, or repair of sidewalks shall be under the supervision of the public works director. The public works director may inspect materials and construction details that in the public works director's judgment may be necessary to ensure compliance with the plans and the applicable standards and specifications.

3.380 Notice to Construct, Alter, or Repair Sidewalk.

(1) When the council determines that a sidewalk needs construction, alteration, or repair, it shall by resolution direct the city manager to issue a notice.

(2) The notice shall require the owner of the property abutting the sidewalk to complete the work within 60 days after service of notice. The notice shall also state that if the work is not completed by the owner within the 60 days, the city reserves the right to complete it and assess the cost against the property abutting the sidewalk.

(3) The city manager shall cause a copy of the notice to be served personally upon the owner of the property abutting the

sidewalk, or the notice may be served by registered or certified mail, return receipt requested. If after diligent search the owner is not discovered, the city manager shall post a copy of the notice in a conspicuous place on the property, and the posting shall be considered to have the same effect as personal service of notice upon the owner of the property.

(4) The person serving the notice shall file with the manager a return of service, reciting the time, place, and manner of service.

3.385 City May Construct, Alter, or Repair Sidewalk.

If the sidewalk alteration or repair is not completed within 60 days after service of the notice, the public works director may complete it if so directed by the council. On completion of the project, the public works director shall submit a report to the council containing an itemized statement of costs.

3.390 Assessment for Sidewalk Work Done by City.

After receipt of the report, the council, by ordinance, shall assess the cost of the work against the property abutting the sidewalk. The assessment shall be a lien against the property and may be levied and collected in the same manner as is provided for in the city's general local improvement assessment procedures.

3.395 Sidewalk Construction Requested by the Property Owner.

If a property owner petitions the council for an order to build a sidewalk on the part of the street abutting on his or her property, agrees to pay cash or to make application to pay the cost in installments as provided by the Bancroft Bonding Act, ORS 223.205, waives the right of service and publication of notice of

construction, and consents to the assessment of the property upon which the sidewalk abuts, the council may order the construction of the sidewalk.