

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