

ORDINANCE NO. 397**AN ORDINANCE OF THE CITY OF COOS BAY, OREGON ESTABLISHING PROCEDURES FOR ADVANCE FINANCING OF PUBLIC IMPROVEMENTS**

The City of Coos Bay ordains as follows:

Section 1. Determination of Council Action. Advance Financing of Public Improvements prescribed in this chapter is a financial recapture for the original installer of public facilities. The creation of an Advance Finance District as prescribed herein is a legislative action of the Coos Bay City Council and is not subject to land use regulations or determination procedures.

Section 2. Definitions. The following words and phrases 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 shall have the meanings set out below:

- A. “Advanced Financing” is a method of recapturing costs by a developer, where such developer installs public improvements, and where such public improvements may be utilized by intervening or future properties.
- B. “Advance Financing Agreement” means an agreement between the developer and the City, as authorized by the Council and executed by the Public Works and Development Department (PW&DD) Director which provides for the installation of and payment for advance financed public improvements and which agreement contains improvement guarantees, provisions for reimbursement by the intervening properties that may utilize such improvement(s), inspection guarantees, and the like as determined in the best interest of the public by the Council.
- C. “Advance Financing District Resolution” means a resolution adopted by the Council designating a public improvement to be an advance financed public improvement and creating an Advance Financing District, and which contains provisions for financial reimbursement by intervening and future properties that may utilize the improvement, as well as such other provisions as determined by the Council to be in the best interest of the public.
- D. “City” means the City of Coos Bay, Oregon.
- E. “Council” means the City Council of Coos Bay, 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 design, construction, purchase, installation, or other expenses associated with the creation of a public improvement. The rights of a developer, created under this ordinance also apply to the developer’s heirs, successors or assigns.

- G. “Development” means that real property being developed by the developer and for which property the Advance Financing District Resolution is adopted.
- H. “District” means an Advance Financing District formed under this ordinance.
- I. “Future Property” means that real property abutting an advance financed public improvement, which was created from an intervening property which was created subsequent to the Advanced Financing District.
- J. “Intervening Property” means that real property abutting an advance financed public improvement, but does not include the development.
- K. “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.
- L. “Public Improvement” means the following:
 - 1. The grading, graveling, paving or other surfacing of any street, or opening, and the laying out, widening, extending, altering, changing the grade of or constructing any street within public right-of-way;
 - 2. The construction of sidewalks, curbs, or gutters within public right-of-way;
 - 3. The construction or upgrading of any sanitary or storm sewer main within public right-of-way;
 - 4. The construction or upgrading of any flood control dike, dam, structure or facility on public property or right-of-way;
 - 5. Those “local improvements” as provided in ORS 310.140(9)(a) as now written and herein after amended;
 - 6. Any other public improvement authorized by the Council.

Section 3. Receipt of Application. The Council will receive applications for advance financing from the developer, which applications shall be submitted to the PW&DD Director. The application shall be accompanied by:

- A. Engineering plans for the proposed public improvement prepared, signed and sealed by an engineer licensed in the appropriate specialty by the State of Oregon
- B. An estimate of the district boundaries
- C. Written justification for the district boundaries
- D. An estimate of the project construction costs prepared by a civil engineer licensed in the State of Oregon

E. A fee set by resolution.

The fee will be applied to the cost of administrative analysis of the proposed advance financing district, the cost of notifying the property owners, recording costs, and such other costs reasonably associated with processing the application. When the City is the developer, the PW&DD Director shall submit the application without the fee.

The application shall be submitted and approved prior to construction of the public improvement. Applications shall not be considered for public improvements already constructed or under construction at the time of submittal of the application.

The application shall not be considered a land use application and the decision regarding the application shall not be considered a land use decision.

Section 4. Public Works & Development Department (PW&DD) Director Analysis. Upon receipt of the advance financing application package, the PW&DD Director shall make an analysis of the advance financing proposal and shall prepare a report to the Council for discussion at a public hearing. Such report shall include a map showing the proposed district with the location and front footage of the development and intervening properties, an estimate of the total cost of the advance financed public improvement and an estimate of the cost for each property within the proposed district.

Section 5. Public Hearing – Notification. Not less than ten (10), nor more than thirty (30), days prior to any public hearing being held pursuant to this ordinance, developer and all owners of intervening property 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 deemed made on the date said letter of notification is posted. Failure of any owner to be so notified shall not invalidate or otherwise affect any Advance Financing District Ordinance or the Council's action to approve or not to approve the same.

Section 6. Public Hearing. After the PW&DD Director's analysis has been completed, an informational public hearing shall be held before the Council 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 remonstrance. The Council has the sole discretion after the public hearing to decide whether or not an Advance Financing District Ordinance shall be enacted.

Section 7. Advance Financing District Resolution of Intent. After the public hearing, held pursuant to Sections 5 and 6, if the Council desires to proceed with the advance financed public improvement, it shall adopt an Advance Financing District Resolution of Intent. The Resolution of Intent shall establish the boundaries of the district and designate the public improvement as an advance financed improvement and provide for advance-financed reimbursement by intervening and future property owners pursuant to this chapter.

Section 8. Public Improvement Construction.

- A. During the construction phase, the applicant's engineer shall provide project oversight to ensure the public improvement is constructed per approved plans. The engineer shall also coordinate with City staff to arrange appropriate progress inspections.
- B. After construction is substantially complete, the applicant's engineer shall submit "as built" plans and appropriate inspection reports. City staff shall perform the appropriate review of the submitted items and field inspect the public improvement. After the applicant has completed all punch list items and City staff has determined the public improvement(s) meet applicable standards, the developer shall submit the final and complete project costs, prepared and sealed by a civil engineer licensed in the State of Oregon, to the PW&DD Director.
- C. Should the cost estimate exceed 10% of the original estimate, the maximum increase in the reimbursement will be 10%.
- D. The PW&DD Director shall verify and analyze said costs; submit a report of the same to the developer, intervening properties and Council; and schedule a second hearing for Council determination of the prospective Advance Finance District cost allocations.

Section 9. Advance Financing District Resolution and Final Agreements. A public hearing shall be held to consider the resolution creating the Advance Financing District. The hearing notification shall meet the standards of Section 5. Pursuant to the criteria set forth in Section 11 (*Advanced Financed Reimbursement*), the resolution shall set the final project costs and the final prospective cost distribution reimbursement for each intervening property. Except when the developer is the City, the Advance Financing District Resolution shall instruct the PW&DD Director to enter into an agreement between 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 and intervening properties, and may make such other provisions as the Council determines necessary and proper. All agreements entered into must contain and have distributed costs to all intervening properties. A copy of the agreement must be filed with the Public Works and Development Department and the Finance Department.

Section 10. Notice of Decision. The City shall notify the developer and all intervening property owners of the decision of the Council regarding the formation of the district. The notification shall include the distributed costs to all intervening properties.

Section 11. Advanced Financed Reimbursement. An advance financed prospective cost distribution reimbursement shall be imposed on all intervening properties for projects that utilize an advance financed public improvement district. Such reimbursement shall be due and payable at the time of utilization of the advance financed public improvement in the manner prescribed in the final ordinance creating the district.

Section 12. Calculation of Reimbursement - Intervening Properties.

- A. The reimbursement shall be calculated by dividing the total approved cost of the advanced financed public improvement by the front footage of the development and all intervening properties, which determines unit cost. The unit cost (cost per foot) is then multiplied by

the front footage of each intervening property. In addition, the City may use a methodology based on a 50/50 split between frontage and acreage, or may use any other formula for apportioning costs that is just and reasonable.

- B. 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 inequalities are created through the strict implementation of formulas, the Council may modify its impact on a case-by-case basis.
- C. Reimbursements shall be increased by an annual Construction Index Rate or a lower amount, as set forth by Council in the Advance Financing District Ordinance. The Construction Index shall be calculated from the date the Council enacts the Advance Financing District Ordinance to the date of payment of the reimbursement.

Section 13. Collection of an Advanced Financed Reimbursement.

- A. The reimbursement is immediately due and payable to the City by an intervening property owner upon such property owner's utilization of the advance financed public improvement for the benefit of such owner's intervening property.
- B. No permit for connection, construction or development of an intervening property shall be issued until the reimbursement is paid in full or otherwise processed under the terms of *Voluntary Imposition of Lien*, Section 14.

Section 14. Voluntary Imposition of Lien.

- A. Whenever reimbursement is due and payable, the intervening property owner may apply, upon forms provided by the PW&DD Director, for the voluntary imposition of a lien upon the parcel for the full amount of the advance financed reimbursement and the payment of that lien in twenty (20) equal semiannual installments, including interest. The applicant must provide a certificate from a licensed title insurance company showing the identity and amount of all other liens already of record against the property and a certificate from the County Tax Assessor or a certified or licensed appraiser showing the assessed or appraised valuation of the property. The City shall not permit a lien greater than 25% of the assessed or appraised value of the property.
- B. Upon receipt of such certificates and application, the PW&DD Director shall compute the amount of the reimbursement and shall report to the Finance Director the amount of the 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 Finance Director shall docket the lien in the docket of liens. From the time that docketing is completed, the City shall have a lien upon that land. The lien shall be enforced in the manner provided in ORS Chapter 223.

Section 15. Disposition of an Advance Financed Reimbursement.

- A. Developers shall receive the reimbursement collected by the City for their advance financed public improvements within ninety (90) days of receipt by the City. Such reimbursements

shall be delivered to developer for a period of ten (10) years after execution of the advance financing agreement. The time limitation does not apply to the City as developer.

- B. After ten (10) years from the effective date of the final resolution, all rights to reimbursement by the developer shall cease, unless the developer is the City.
- C. When the City is the developer, the district shall be continued in perpetuity, unless terminated by the Council.
- D. The City shall collect an amount for administrative services performed in collecting and distributing reimbursements. Said administrative fee shall be 5% of the amount collected.

Section 16. Recording. All Advance Financing District Resolutions and Developer Agreements shall be recorded by the City in the deed records of the County. The resolution and agreement shall contain full legal descriptions of the development and intervening properties. Failure to make such recording shall not affect the legality of an Advance Financing Resolution or Agreement.

Section 17. Public Improvements. Public improvements installed pursuant to advance financing district agreements shall become and remain the sole property of the City.

Section 18. Severability. The sections and subsection of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 19. Effective Date. This ordinance shall become effective upon the 30th day after the enactment by the City Council and signature of the Mayor.

Passed by the City Council and Approved by the Mayor August 7, 2007.