

ORDINANCE BILL NO. 12 FOR 1995

ORDINANCE NO. 1091

AN ORDINANCE PROVIDING FOR ADVANCE FINANCING OF PUBLIC IMPROVEMENTS; AND DECLARING AN EMERGENCY.

The City of Sweet Home does ordain as follows:

Section 1. Definitions. The following words and phrases for the purposes of this chapter and for the purposes of any advance financing agreement entered into pursuant hereto and for any actions taken as authorized pursuant to this chapter or otherwise, shall have the meanings set out below:

A. Advance 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 developer and the city, as authorized by the council, and executed by the mayor, 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 and future properties that may utilize such improvement, inspection guarantees, and the like as determined in the best interest of the public by the council.

C. Advance Financing District Ordinance means an ordinance adopted by the council and executed by the mayor designating a public improvement to be an advance financed public improvement and creating an advance financing district and containing provisions for financial reimbursement by intervening and future properties that may 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 City of Sweet Home

E. Council means the council of Sweet Home

F. Developer means the city, and individual, a partnership, a joint venture, a corporation, a subdivider, a ~~partitioner~~ of land or any other entity, without limitation, who will bear, under the terms of this chapter, the expense of 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 his heirs, successors or assigns.

G. Development means that real property developed by the developer or improved by the developer and for which property the Advance Financing District Ordinance is adopted.

H. Future property means that real property which may be served by the installation of oversized or over-capacity public improvements, but does not include the development or intervening property.

I. Intervening property means that real property abutting an advance financed public improvement, but does not include the development or future property.

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 or water main;

4. The construction or upgrading of any flood control dike, dam, structure, or facility;

5. Those "local improvements" as provided in ORS 223.387(1) as now written or hereafter amended;

6. Any other public improvement authorized by the council.

Section 2. Receipt of Application. The council will receive applications for advance financing from developer, which applications shall be submitted to the city and shall be accompanied by a fee set by resolution. The fee will be applied for 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 council may direct the city administrator to submit the application without fee.

Section 3. City Analysis. Upon receipt of the advance financing application, the city engineer shall make an analysis of the advance financing proposal and shall prepare a report to be submitted to the council for discussion at a public hearing. Such report shall include a map showing the location and front footage of the development and

intervening properties, as well as the location and total acreage of all future properties. The report shall also include an estimate of the total cost of the advance financed public improvement.

Section 4. Public Hearing -- Notification. Not less than ten, nor more than thirty days prior to any public hearing being held pursuant to this chapter, 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 District Ordinance or the council's action to approve or not to approve the same.

Section 5. Public Hearing. After the city engineer analysis has been completed, and 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 remonstrances. The council has the sole discretion after the public hearing to decide whether or not an Advance Financing District Ordinance shall be adopted.

Section 6. Advance Financing District Ordinances and Agreements. After the public hearing, held pursuant to Section 5, if the council desires to proceed with the advance financed public improvement, it shall adopt an Advance Financing District Ordinance. The ordinance shall designate the improvement as an advance financed improvement and provide for advance financed reimbursement by intervening and future property owners pursuant to this chapter. Except when the developer is the city, the Advance Financing District Ordinance may instruct the city 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, intervening and future 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 future and intervening properties. A copy of the agreement must be filed with the finance director.

Section 7. Advance Financed Reimbursement. An advance financed reimbursement is imposed on all intervening and future properties for projects that utilize an Advance Financed Public Improvement District. Such reimbursement is made at the time of utilization of the advance financed public improvement.

Section 8. Calculation of Reimbursement -- Intervening Properties.

A. The advanced financed reimbursements, imposed on intervening properties, when future properties are not involved, shall be calculated by dividing the total actual cost of the advanced financed public improvement by the front footage of 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 any other method of apportioning costs on those properties specially benefitted that are just and reasonable. Interest is then applied and calculated as set out in Section 10.

B. When the advance financed improvement includes future properties, then the above calculation will be the same except that the total cost of the improvement shall be reduced by the cost which relates to the oversizing or over capacity of the advance financed improvement.

C. In both subsections A and B of this section and Section 9, 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 implementation of the above formulas, the council will modify its impact on a case by case basis.

Section 9. Calculation of Reimbursement -- Future Properties. The advance financed reimbursement imposed on future properties shall be calculated by dividing the total actual cost of the advance financed public improvement that relates to oversizing or over capacity by the total acreage of all future properties which determines unit cost. The unit cost (cost per acre) is then multiplied by the acreage of each future property. In addition, the city may use any

other method of apportioning costs on those properties specially benefitted that are just and reasonable. Interest is then applied and calculated as set out in Section 10.

Section 10. Interest Applied to Reimbursements. In both Sections 8 and 9 the reimbursements will be increased by an annual interest rate as set forth by council in the Advance Financing District Ordinance. The interest will be calculated from the date the council adopts the Advance Financing District Ordinance to the date of collection of the reimbursement.

Section 11. Collection of an Advance Financed Reimbursement.

A. The advance financed reimbursement is immediately due and payable to the city by intervening or future property owners upon their utilizing any advance financed public improvement. If connection is made or construction commenced without the proper permits then the advance financed reimbursement is immediately due and payable upon the earliest date that any such permit was required.

B. No permit for connection or construction shall be issued until the advance financed reimbursement is paid in full or otherwise processed under the terms of Section 12. Whenever the full and correct advance financed reimbursement has not been paid and collected for any reason, the city finance director 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.

C. The city council, by motion, shall then set a public hearing and shall direct the city engineer to give notice of that hearing to each of those intervening and future property owners, together with a copy of the city engineer's report concerning the unpaid reimbursement, either in person or by regular mail. Upon public hearing, the council may accept, reject or modify the city engineer's report; and if it finds that any reimbursement is unpaid and uncollected, the council, by motion, may direct the finance director to docket the unpaid and uncollected reimbursement in the 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 as provided by law.

Section 12. Voluntary Imposition of Lien.

A. The council may allow financing for an advance finance reimbursement. If such option is allowed, it shall be so stated in the ordinance creating the district. If so allowed, when an advance financed reimbursement is due and collectable, the intervening or future property owner within the city limits, may apply, upon forms provided by the city, 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 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 showing the assessed valuation of the property. The city shall not permit a lien greater than that allowed by law. Such property that lies outside the city limits must have the permission of Linn County in accordance with Oregon law.

B. Upon receipt of such certificates and application, the city shall compute the amount of the advance financed reimbursement and shall report to the finance director 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 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. That lien shall be enforced in the manner as provided by law.

Section 13. Disposition of an Advance Financed Reimbursement.

A. Developers shall receive the advance financed reimbursement collected by the City for their advance financed public improvements. Such reimbursements shall be delivered to developer for a period of ten years after execution of the advance financing agreement unless extended by Section 12. After said period all payments shall be the property of the City of Sweet Home and not be delivered to the developer.

B. Payments will be made to the developer by the City within ninety days of receipt of the advanced financed reimbursements, and any 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.

C. The City shall collect an amount for administrative services performed in collecting and distributing the reimbursement. Such administrative fee shall reasonably reflect the service preformed, and shall be set by resolution.

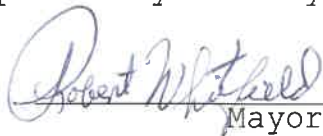
Section 14. Recording. All Advance Financing District Ordinances and Agreements or a memorandum of same shall be recorded by the City in the deed records of the County. The ordinance and agreement and memorandum shall contain full legal description of the development, intervening properties and future properties. Failure to make such recording shall not affect the legality of an advance financing ordinance or agreement.

Section 15. 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. Advance financed reimbursements, plus interest, not paid to the developers as set forth in Section 13, shall be paid to the City to be used for related system improvement as authorized from time to time by the Council.

Section 16. 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 theretofore entered into by the City, and such agreement shall remain in full force and effect pursuant to the terms thereof.

Section 17. Emergency Clause. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety. Therefore, an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force and effect from and after its passage and approval of the Mayor.

PASSED by the Council and approved by the Mayor this 26th
day of September, 1995.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder