

**RESOLUTION NO. 1257**

**A RESOLUTION DESIGNATING THE SE 13TH AVENUE SANITARY SEWER IMPROVEMENT PROJECT AS AN ADVANCE FINANCED PUBLIC IMPROVEMENT, AND PROVIDING FOR ADVANCE FINANCED REIMBURSEMENT FROM BENEFITTED PROPERTY OWNERS**

**WHEREAS**, the Canby City Council has proposed an Advance Financing program for sanitary sewer improvements on SE 13th Avenue at an estimated cost of \$175,000; and

**WHEREAS**, the total benefitted property totals 4.571 acres; and

**WHEREAS**, the City's Engineer of Record has prepared an Engineer's Report identifying the benefitting property owners and preliminary allocations of cost, a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein; and

**WHEREAS**, the Canby Municipal Code Chapter 4.12 defines the process of establishing an Advance Financing District; and

**WHEREAS**, the City of Canby has properly noticed and held an informational hearing on January 18, 2016.

**NOW THEREFORE, IT IS HEREBY RESOLVED**, that the City Council instruct the City Administrator to implement the Advance Financed improvement proposal in the estimated amount of \$175,000, with preliminary cost allocations of \$38,284 per acre and including annual simple interest based on an average ENR Construction Cost Index inflation of 3.25% plus 0.25% for administration, for a total of 3.5% per year as permitted in the Municipal Code; and

**BE IT FURTHER RESOLVED** that the SE 13th Avenue Sanitary Sewer Improvement project is designated as an advance financed improvements and said benefitted property owners, as defined in Exhibit "A", upon connection to the system shall be responsible for advance financed reimbursement in the amounts indicated; and

**BE IT FURTHER RESOLVED** that in accordance with the Canby Municipal Code Chapter 4.12, this Advance Finance District program shall remain in effect until all benefitted property is connected to the system, or until all cost allocations and accrued interest has been paid in full to the City of Canby.

This resolution will take effect on January 18, 2017.


**ADOPTED** this 18<sup>th</sup> day of January 2017 by the City of Canby City Council.



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Brian Hodson  
Mayor

ATTEST



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Kimberly Scheafer, MMC  
City Recorder

**Exhibit "A"**

City of Canby

**SE 13th Avenue  
Sanitary Sewer Collection System  
Sequoia Parkway to Mulino Road**

Advance Financing District  
Engineer's Report



EXP 12/2016

November 2016

CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS  
PORTLAND, OREGON

ENGINEERING REPORT  
CITY OF CANBY

SE 13<sup>th</sup> AVENUE, SEQUOIA PARKWAY TO MULINO ROAD  
SANITARY SEWER ADVANCE FINANCING DISTRICT  
November, 2016

In 1989, the City of Canby prepared an Industrial Attraction Plan to promote industrial development within the City as a means to strengthen economic and employment opportunities. These initial efforts resulted in creation of the Logging Road Industrial Park, which was subsequently renamed the Canby Pioneer Industrial Park, and construction of multiple phases of infrastructure development over the past twenty-five years.

The City is currently in the design phase of the Mulino Pumping Station project, which will be the final infrastructure component required to provide sanitary sewer service to these industrial properties. The Mulino Pumping Station project will include construction of three components, including:

1. The Mulino Pumping Station with auxiliary power supply;
2. A new 6" force main to discharge into Sequoia Parkway sewer main; and,
3. An 8" gravity sewer on SE 13<sup>th</sup> Avenue from Sequoia Parkway to Mulino Road.

These improvements will provide required pumping facilities to serve the remaining industrial properties within the Urban Growth Boundary, as well as serve remaining residential development that contributes to the pumping station. Additional gravity collection pipelines will also be required, within each developable property, as specific developments occur within the service area. The service area of this station was identified in the 1999 City of Canby Wastewater Collection System Master Plan.

The first two components, the pumping station and force main, are listed in the Sanitary Sewer System Development Charge (SDC) Capital Improvement Plan (CIP) and are eligible for SDC **Improvement Fee** funding in accordance with ORS 223.297 - 314. SDC Improvement Fee funds are essentially a fund of pooled resources collected from all developers throughout the City. SDC revenues are generally used when excess capacity is provided by an infrastructure development project that will serve multiple properties.

The third work component, an 8" gravity sanitary sewer, is the minimum required for every development. As such, by definition, an 8" sanitary sewer pipeline does not have excess capacity, and is not listed as an eligible expense in the SDC CIP. As a result, 8" gravity sewer pipelines are not eligible for SDC **Improvement Fee** funding. As is common to all land development, the cost of an 8" sewer line is the responsibility of the property owner to construct.

The cost of a gravity line can be financed using SDC **Reimbursement Fee** funds, but a mechanism should be adopted to recover the expenditures from the abutting property owners who will benefit from the improvement when they connect to the system.

An Advance Financing District is a method of allocating development costs proportionally to each benefited property owner, and establishing a mechanism to collect the allocated costs from each developer at the time they benefit from the improvement. The requirements for establishing and administering an AFD are contained in the Canby Municipal Code (CMC) Chapter 4.12. This Engineering Report is to provide the City staff analysis, as is required in Chapter 4.12.040. A copy of the current CMC Chapter 4.12 is attached.

The costs allocations are not assessments, are not immediately due and payable, and do not become a lien on any benefited property UNTIL the property develops and utilizes the advanced financed improvements. Each property owner has the option to not connect to the improvement, and would then never be responsible to pay any portion of the advanced financed project cost.

As permitted in the Canby Municipal Code, and as approved by motion of the Canby City Council on November 16, 2016, the City is acting as the developer for this project in order to coordinate the improvements that will impact multiple private properties. The City will provide the initial funding required to construct this work and, in accordance with the Canby Municipal Code, will form an Advanced Financing District to ensure future reimbursement from all properties in proportion to their benefit from the improvements.

#### AFD PROJECT SCOPE & ESTIMATED COST:

The scope of work included in this AFD includes construction of an 8" gravity sewer in SE 13<sup>th</sup> Avenue, from the current termination point at Sequoia Parkway, and extending east to the point where the gravity line will cross under the Oregon Pacific Railroad to discharge into the pumping station wet well on the north side of the tracks.

An 8" gravity sanitary sewer at minimum slope has a capacity of approximately 0.50 Million Gallons per Day (MGD). The Master Plan indicates that the gravity line on SE 13<sup>th</sup> Avenue will contribute an estimated peak flow of 0.19 MGD to the system. When the industrial property north of the railroad develops, that area is estimated to contribute an additional peak flow of 0.22 MGD to the station. Although difficult to estimate future industrial development loads, the total peak daily flow to the station from within the UGB is estimated to be 0.41 MGD, or 285 gallons per minute.

Extraordinary costs for the gravity pipeline are eligible for SDC Improvement Fee funding and will be excluded from the advanced financed portion of the work. Extraordinary costs would be those that are not typically associated with constructing an 8" gravity sewer along the benefitting property frontage. These would include all of the cost of the gravity sewer once it turns north to cross under the railroad through the directional bore. The costs of the gravity pipeline and casing pipe under the railroad, from the angle point north, will be included with the SDC Improvement Fee eligible costs with the pumping station.

The estimated cost of the gravity pipeline allocated to the benefited properties is as listed below:

City of Canby  
SE 13<sup>th</sup> Avenue Sanitary Sewer AFD  
**Preliminary Construction Cost Estimate**

	<i>Item</i>	<i>Quantity</i>	<i>Units</i>	<i>Price</i>	<i>Total</i>
1	Mobilization Bond & Insurance	All	LS	\$8,000	\$8,000
2	Temporary Traffic Control	All	LS	4,000	4,000
3	Erosion & Sediment Control	All	LS	3,000	3,000
4	8" Gravity Sewer w/ Select Backfill	1,078	LF	90	97,020
5	Sanitary Manhole, 8-12' deep	4	Each	5,000	20,000
6	Asphalt Sawcut & AC Trench Repair	50	LF	40	2,000
<b>Subtotal</b>					<b>\$134,020</b>
Engineering, 15%					20,100
Legal, Administration, Contingency, 15%					20,880
<b>TOTAL</b>					<b>\$175,000</b>

**AFD PRELIMINARY COST ALLOCATIONS:**

An 8" gravity sewer is required across the frontage of all developable property to serve the abutting properties on each site. As a result, the improvement costs for the 8" gravity sewer are allocated to the area contained within the 100-foot depth of the abutting properties, on both the north and south side of SE 13<sup>th</sup> Avenue, between Sequoia Parkway and the railroad crossing. The benefited area is thus defined as the 100-foot depth abutting the public right-of-way, and is not reduced if additional right-of-way is dedicated to the public as a component of future development.

A map of the benefited area is attached as Exhibit A. SE 13<sup>th</sup> Avenue is the current Urban Growth Boundary. As a result, although the gravity line is designed to have sufficient depth to serve the abutting 100-foot deep area south of SE 13<sup>th</sup> Avenue, it may be a substantial time before connection can or will be made.

The costs of the SE 13<sup>th</sup> Avenue 8" gravity sewer are allocated to all benefited properties shown on the attached map. These cost allocations do not result in a lien on the property, and do not become due until the property owner elects to connect to the system, if ever. The preliminary cost allocations are shown in the following table:

City of Canby  
SE 13<sup>th</sup> Avenue Sanitary Sewer AFD  
**Benefited Area & Preliminary Cost Allocation**

<i>Tax Lot</i>	<i>Owner of Record</i>	<i>Frontage Length (feet)</i>	<i>Benefited Area (acres)</i>	<i>Pro Rata Share (%)</i>	<i>Cost Allocation</i>
4 1E 3 Lot 102	Lisa M. Weygandt Trust 24401 S Mulino Road Canby, OR 97013	676	1.552	33.95%	\$59,418
4 1E 3 Lot 200	Chad Robison & Carrie Claeys 2542 SE 13th Avenue Canby, OR 97013	318	0.634	13.87%	\$24,273
4 1E 3 Lot 2700	Canby Rod & Gun Club 2675 SE 13th Avenue P.O. Box 311 Canby, OR 97013	209	0.479	10.48%	\$18,338
4 1E 3 Lot 2800	Canby Rod & Gun Club 2675 SE 13th Avenue P.O. Box 311 Canby, OR 97013	830	1.906	41.70%	\$72,971
	<b>TOTAL</b>	<b>2,033</b>	<b>4.571</b>	<b>100.00%</b>	<b>\$175,000</b>

**AFD REIMBURSEMENT AND COLLECTIONS:**

In accordance with CMC 4.12, approval of an Advance Financing District is at the discretion of the City Council. An informational public hearing will be conducted with estimated costs prior to adopting the district, and a second hearing will be conducted upon completion of the work, with actual costs to adopt the final cost allocation.

The cost allocations, plus interest, only become due from the benefiting property at the time they apply to connect to the system or apply for building permits for projects that utilize the advance financed improvement. Property owners who do not connect to the system have no obligation for repayment of their allocation of cost to construct the improvements.

In accordance with Canby Municipal Code Chapter 4.12, cost allocations accrue interest until paid. If the advance financed improvements incur debt, the rate of interest charged to the benefited properties per the CMC would be the rate accrued in the debt service. If debt is not incurred to construct the project, the CMC allows the rate of interest charged to be 7% per year.

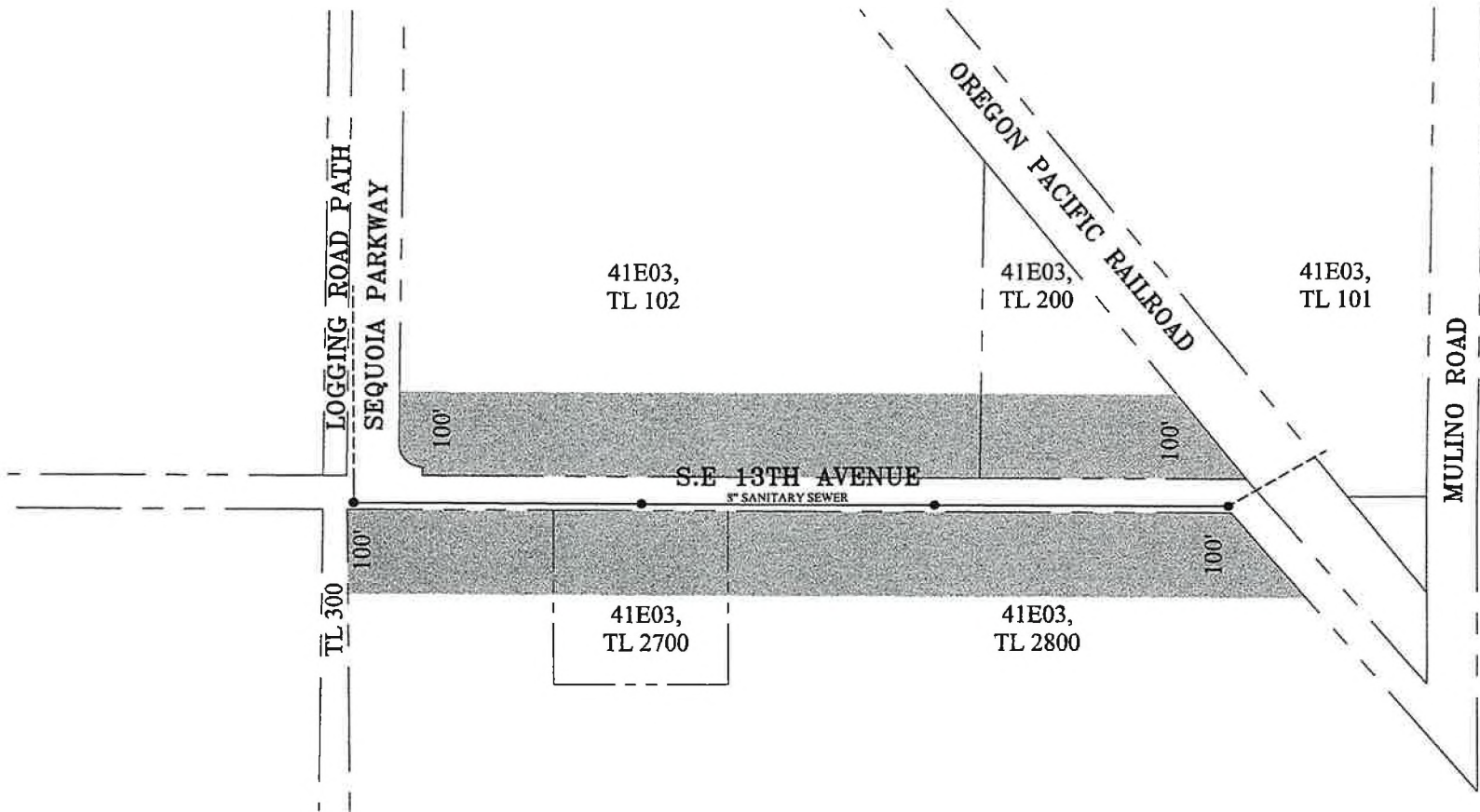
In the current economic climate, the 7% rate per the code is higher than what would be expected if debt were incurred. Current debt service rates are estimated to be 2-4%, which also exceed inflation estimates, which are currently 1.64% per year. Per the CMC Chapter 4.12.080, the Council has the option to establish the interest rate on a case-by-case basis.

The cost estimates and allocation of costs contained in this report are preliminary. Upon completion of the construction, final costs will be summarized and final allocations will be provided to the City Council for adoption. The allocations of costs remain in place indefinitely, until all benefited properties apply for connection to the system. The reimbursement revenues collected should be returned to the Sanitary Sewer Capital Reserve as SDC Reimbursement Fees, unless some other funding mechanism is utilized for the construction.

Attached to this Engineering Report is a map showing the limits of the benefited property, and a copy of the Canby Municipal Code Chapter 4.12, Advance Financing of Public Improvements.



EXHIBIT A



T4S, R1E, WM, SECTION 3  
 CITY OF CANBY  
 S.E. 13TH AVENUE SANITARY SEWER  
 ADVANCE FINANCING DISTRICT BOUNDARY  
 CLACKAMAS COUNTY, OREGON

**LEGEND:**  
 BENEFITTED AREA

CURRAN-McLEOD, INC.  
 CONSULTING ENGINEERS



SCALE: 1" = 200'

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## CHAPTER 4.12: ADVANCE FINANCING OF PUBLIC IMPROVEMENTS

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Section

- 4.12.010 Definitions.
- 4.12.020 Purpose.
- 4.12.022 Applicability.
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- 4.12.050 Public hearing.
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- 4.12.100 Recording.
- 4.12.110 Public improvements.
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**§ 4.12.010 Definitions.**

The following are definitions 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:

Advance Financing means a developer’s or city’s payment for the installation of 1 or more public improvements installed pursuant to this chapter which benefiting property owners may utilize upon reimbursing a proportional share of the cost of the improvement.

Advance Financing Agreement means an agreement between a private developer and the city, as authorized by the Council and executed by the City Administrator, which agreement provides for the installation of and payment for advance financed public improvements, and may in the agreement require the guarantee or guarantees as the city deems best to protect the public and benefiting property owners, and may make other provisions as the Council determines necessary and proper.

Advance Financing Resolution means a resolution passed by the Council and executed by the Mayor designating a public improvement to be an advance financed public improvement and containing provisions for financial reimbursement by benefiting property owners who eventually utilize the improvement and other provisions as determined in the best interest of the public by the Council.

Benefiting Property Owner means the fee holder of record of the legal title to real property which, by virtue of installation of an advance financed public improvement, may be served, all or in part, by the same. Where real property is being purchased under a recorded land sales contract, then the purchasers shall also be deemed owners.

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 chapter, the expense of construction, purchase, installation or other creation of a public improvement.

Proportional Share means the amount of the advance financed reimbursement due from the benefiting property owner calculated in accordance with § 4.12.080B.

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; and/or
4. Any other public improvement authorized by the Council.

#### **§ 4.12.020 Purpose.**

The purpose of this chapter is to ensure orderly new development by providing methods to finance necessary public improvements so that these necessary public improvements are installed concurrent with or before the new development occurs; to allow the city to require that new development pay the installation cost of these necessary public improvements; to assure that these necessary public improvements are installed in accordance with adopted public facilities plans; and to reimburse developers and/or the city for a share of costs incurred if a development or improvement provides access to public improvements for other benefiting property owners.

#### **§ 4.12.022 Applicability.**

A. In accordance with § 16.06.120B. of the Land Development and Planning Ordinance, the Planning Commission may condition approval of subdivisions, land partitions and conditional use permits to require that the applicant construct necessary public improvements for the development. When the development is to occur at locations where approved master planning documents show new public improvements are necessary, the Planning Commission may condition approval of subdivisions, land partitions and conditional use permits to require that the applicant enter into an advance financing agreement when the Commission deems the agreement will best protect the public and promote the general welfare of the city. The applicant, at his or her option, may alternatively elect to be reimbursed by negotiating with the public service provider for reimbursement of oversized public improvements, where provisions for the negotiations exist; by completing the public improvement without reimbursement; or by a combination of methods.

B. In accordance with § 4.12.020, the City Council may determine that an advance financed public improvement will best protect the public and promote the general welfare of the city by ensuring orderly new development. In the absence of a development application, the Council may, by motion, designate the city or other public entity as the developer and direct the City Administrator to prepare an advance financing application.

#### **§ 4.12.030 Receipt of application.**

The Council will receive applications, accompanied by an application fee that the Council may, from time to time, set by resolution, for advance financed public improvements, and submit the applications to the Public Works Department. The fee will be applied against the cost of administrative analysis of the proposed advance financed public improvements for the cost of notifying the property owners, and for recording cost and the like. When the city or other public entity is the developer, the Council shall, by motion, direct the City Administrator to submit the application to the Public Works Department without fee. Applications for advance financed public improvements are expected to be submitted and approved prior to start of work; however, applications will be accepted for a period of 6 months after start of work for the public improvement.

(Am. Ord. 1327, passed 5-19-2010)

#### **§ 4.12.040 City staff analysis.**

Upon receipt of the advance financed public improvements application, the Public Works Department shall make an analysis of the advance financed public improvements proposal and shall prepare a report to be submitted to the City Administrator for Council review and discussion and public hearing. The report shall include a map showing the location and area of all benefiting properties. The report shall also include the City Engineer's estimate of the total cost of the advance financed public improvement.

#### **§ 4.12.050 Public hearing.**

Within a reasonable time after the Public Works Department has completed its analysis, an informational public hearing shall be held in which all parties and the general public shall be given the opportunity to express their views and ask questions pertaining to the proposed advance financed public improvement. Since advance financed public improvements do not give rise to assessments, the public hearing is for informational purposes only and is not subject to mandatory termination due to remonstrances. The Council has the sole discretion after the public hearing to decide whether or not an advance financing resolution shall be passed.

#### **§ 4.12.060 Notification.**

Not less than 10 nor more than 30 days prior to any public hearing being held pursuant to this chapter, the developer, all benefiting property owners and the general public shall be notified of the hearing and the purpose thereof. Public notice shall be accomplished by a written notice posted at City Hall and other conspicuous locations as the Council may determine to be appropriate, and by a written notice published in a newspaper of general circulation in the community, once in either of the 2 consecutive weeks prior to the hearing. Notification of benefiting property owners shall also be accomplished by regular mail, or by personal service. If notification is accomplished by mail, notice shall be made on the date that the letter of notification is posted. Failure of any owner to be so notified shall not invalidate or otherwise affect any advance financing resolution or the Council's action to approve or not to approve the same.

#### **§ 4.12.070 Advance financing resolutions and agreements.**

After the public hearing held pursuant to § 4.12.050, if the Council desires to proceed with advance financed public improvement, it shall pass an advance financing resolution accordingly. The resolution shall designate the proposed improvement as an advance financed public improvement and provide for

advance financed reimbursement by benefiting property owners pursuant to this chapter. When the developer is a private developer, the advance financing resolution shall instruct the City Administrator to enter into an agreement between the developer and the city pertaining to the advance financed public improvement, and may in the agreement require a guarantee or guarantees as the city deems best to protect the public, benefiting property owners, and may make other provisions as the Council determines necessary and proper.

#### **§ 4.12.080 Advance financed reimbursement.**

A. Imposed. An advance financed reimbursement is imposed on all benefiting property owners. It shall be due and payable at the time that the property owners apply for connection to the advance financed public improvement, or apply for building permits for projects that utilize an advance financed public improvement. In the case of property located outside of the city limits, but within the advance financed district, the property owner may pay off the assessed reimbursement in full, including any accrued interest thereon at any time prior to the time of actual connection, to stop interest charges from further accruing. The property owner is not required to pay the reimbursement prior to the time the owner connects to or utilizes the advance financed public improvements, but may do so voluntarily at his or her discretion. This prepayment does not guarantee annexation of the property at a particular time, or approval of a particular development.

(Am. Ord. 1005, passed 8-19-1998)

#### B. Rates.

1. Benefiting property owners shall pay advance financed reimbursement calculated as follows:

a. If the advance financed public improvement was completed by a private developer, the reimbursement shall be the total actual cost of the improvement, increased by 7% annual simple interest, or other interest rate as the Council may, from time to time, set by resolution, multiplied by the fraction of area owned by the benefiting property owner of the total area of all the benefiting property owners;

b. If the advance financed public improvement was completed by a public agency, the reimbursement to the public agency shall be the total cost of the improvement increased by the same interest rate, including costs, as the public agency pays to finance construction, multiplied by the fraction of area owned by the benefiting property owner of the total area of all the benefiting property owners; or

c. If the advance financed public improvement was completed without the issuance of debt by the public agency, the reimbursement to the public agency shall be to the total cost of the improvement increased by the current interest rate private developers receive, as set forth above, multiplied by the fraction of area owned by the benefiting property owner of the total area of all the benefiting property owners.

2. If inequities are created through the strict implementation of the above formulas, the Council may modify its impact on a case-by-case basis.

#### C. Collection.

1. The advance financed reimbursement is immediately due and payable by benefiting property owners upon their application for connection to an advance financed public improvement or any building permit, the result of which will utilize any advance financed public improvement. If connection is made or construction commenced without the above-mentioned permits, then the advance financed reimbursement is immediately due and payable upon the earliest date that the permit was required. No permit for connection or construction shall be issued until the advance financed reimbursement is paid in full or otherwise processed in accordance with the terms of division C.2. of this section. Whenever the full and correct advance financed reimbursement is due and has not been paid and collected for any reason, the City Administrator shall report to the Council the amount of the uncollected reimbursement, the description of

the real property to which the reimbursement is attributable, the date upon which the reimbursement was due and the name or names of the benefiting property owners. The City Council, by motion, shall then set a public hearing and shall direct the City Administrator to give notice of the hearing to each of those benefiting property owners, together with a copy of the City Administrator's report concerning the unpaid reimbursement, either in person or by certified mail. Upon public hearing, the Council may accept, reject or modify the City Administrator's report; and if it finds that any reimbursement is unpaid and uncollected, the Council, by motion, may direct the City Recorder to docket the unpaid and uncollected reimbursement in the city record of liens. 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 benefiting property owners. The lien shall be enforced in the manner provided by O.R.S. Chapter 223.

2. Whenever an advance financed reimbursement is due and collectable, the benefiting property owner may apply, upon forms provided by the City Administrator, for the voluntary imposition of a lien upon a parcel for the full amount of the advance financed reimbursement and the payment of that lien in 20 equal semi-annual installments including interest at the current legal rate. The applicant must provide a certificate from a licensed title insurance company showing the identity and amount of all other liens already of record against the property and a certificate from the County Tax Assessor showing the assessed valuation of the property. The city shall not permit a lien greater than the assessed value less the combined total principal balance and accrued interest on all prior liens. Upon receipt of these certificates and application, the City Administrator shall compute the amount of the advance financed reimbursement, the date upon which the reimbursement is due, the name or names of the applicant/owners and the description of the property; and upon receiving that report, the City Recorder shall docket the lien in the city docket of liens. From the time that docketing is completed, the city shall have a lien upon that land for the amount of the charge and interest upon that charge at the rate established by the Council for advance financed public improvements. That lien shall be enforced in the manner provided in O.R.S. Chapter 223.

#### **§ 4.12.090 Disposition of advance financed reimbursements.**

Developers shall receive advance financed reimbursement collected by the city pertaining to their advance financed public improvements. Such reimbursement shall be delivered to the developer for a period of 10 years from the date the applicable advance financing agreement has been executed. In addition, any developer, or said developer's heirs, successors or assigns, may apply at 5-year intervals for 2 5-year extensions beyond the initial 10-year period. Such reimbursement will be made by the city within 90 days of receipt of the advance financed reimbursements. Advance financed reimbursements not paid the developer under the terms of this chapter shall be retained by the city to be used for related system improvements as authorized from time to time by the Council.

(Am. Ord. 903, passed 1-4-1993)

#### **§ 4.12.100 Recording.**

All advance financing resolutions shall be recorded by the city in the deed records of Clackamas County. The resolution shall identify full legal description of the benefiting properties. Failure to make the recording shall not affect the legality of an advance financing resolution or agreement.

#### **§ 4.12.110 Public improvements.**

Public improvements installed pursuant to advance financing agreements shall become and remain the sole property of the city pursuant to the advance financing agreements, and advance financed reimbursement, plus interest, not paid to the developer during the 10-year period, or any extension or

extensions thereof, as set forth in § 4.12.080, shall be paid to the city to be used for related system improvement as authorized from time to time by the Council.

**§ 4.12.120 Multiple public improvements.**

More than 1 public improvement may be the subject of an advance financing agreement or resolution.