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ORDINANCE NO. 890

AN ORDINANCE ADOPTING AN ADDITION TO THE STAYTON MUNICIPAL CODE ("SMC") WHICH ESTABLISHES PROCEDURES FOR ADVANCE FINANCING OF PUBLIC IMPROVEMENTS TO BE SET FORTH IN THE STAYTON MUNICIPAL CODE TITLE 3, CHAPTER 3.08; AND, DECLARING AN EMERGENCY.

WHEREAS, Stayton City Council is faced with properties outside the city limits but within the City's urban growth boundary ("UGB") that warrant improvements in contemplation of becoming within the Stayton city limits;

WHEREAS, in order to accommodate the financing of public improvements which may serve said properties, it is necessary and appropriate to establish the procedure for "Advance Financing of Public Improvements" to be set forth in the Stayton Municipal Code's "new" Chapter 3.08 (Exhibit "A");

WHEREAS, as development of properties within the UGB is imminent, it is appropriate that an emergency be declared as to the enactment of this Ordinance so that it is in full force and effect immediately from and after its adoption by the Stayton City Council.

NOW, THEREFORE, the Stayton City Council does ordain as follows:

SECTION 1. Stayton Municipal Code Chapter 3.08 "Advance Financing of Public Improvements" is hereby adopted and added to the Code's Title 3 "Revenue and Finance", the entire text of which is appended hereto, designated Exhibit "A" and by this reference incorporated herein.

SECTION 2. Upon adoption by the Stayton City Council and the Mayor's signing, this Ordinance shall become immediately effective.

ADOPTED BY THE STAYTON CITY COUNCIL this _____ day of _____, 2006.

Signed: June 23, 2006

CITY OF STAYTON

By: [Signature]
Gerry Aboud, Mayor

Signed: June 26, 2006

ATTEST: [Signature]
Chris N. Childs, City Administrator

APPROVED AS TO FORM:

[Signature]
David A. Rhoten, City Attorney

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CHAPTER 3.08

ADVANCE FINANCING OF PUBLIC IMPROVEMENTS

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3.08.10 DEFINITIONS.

The following are definitions for the purposes of this Chapter and for the purposes of any advance financing agreement entered into with the City of Stayton ("City") pursuant hereto and for any actions taken as authorized pursuant to this Chapter or otherwise:

- A. Advance Financing means a developer's or City's payment for the installation of one or more public improvements installed pursuant to this Chapter which benefiting property owners may utilize upon reimbursing a proportional share of the cost of such improvement.
- B. Advance Financing Agreement means an agreement between one or more private land owner(s) or developer(s) 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 financing of public improvements, and may, in such agreement, require such guarantee or guarantees as the City deems best to protect the public and benefiting property owners, and may make such other provisions as the Council determines necessary and proper.
- C. 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 such other provisions as the Council determines in the best interest of the public.
- D. Benefiting Property Owner means the fee holder of record of the legal title to real property which, by virtue of installation of an advance financing agreement, may be served, all or in part, by the same. Where such EXHIBIT "A" ent, eing

purchased under recorded land sales contract, then such purchaser(s) shall also be deemed owner(s).

- E. City means the City of Stayton and shall include the following entities:
1. Council means the City Council of Stayton;
 2. City Administrator means the City Administrator of the City of Stayton;
 3. Planning Commission means the Planning Commission of the City of Stayton;
 4. Public Works Director means the Public Works Director of the City of Stayton;
 5. City Engineer means the City Engineer of the City of Stayton.
- 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 Chapter, the expense of construction, purchase, installation, or other creation of a public improvement.
- G. Proportional Share means the amount of the advance financed reimbursement due from the benefiting property owner calculated in accordance with section 3.08.18(B).
- H. 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;
 4. The construction or upgrading of any water line, reservoir, well, or related water facility; or
 5. Any other public improvement authorized by the Council.

3.08.11 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, the City, or both for a share of costs incurred if a development or improvement provides access to public improvements for other benefiting property owners.

3.08.12 APPLICABILITY.

- A. In accordance with Title 17 "Land Use and Development Code," the Planning Commission or Council 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 or Council may condition approval of subdivisions, land partitions and conditional use permits to require that the applicant enter into an advance financing agreement which will best protect the public and promote the general welfare of the City.

- B. In accordance with section 3.08.020, the 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 option, designate the City or other public entity as the developer and direct the City Administrator to prepare an advance financing application.
- C. In the event the development's subject property is in the Urban Growth Boundary, it shall be, in due course, annexed to the City.
- D. The terms of the City's agreement(s) with Marion County, Stayton Fire District and others (including relationships to Projects in Stayton's Urban Growth Boundary shall be considered in action(s) taken through under the auspices of this Chapter.

3.08.13 RECEIPT OF APPLICATION.

The City will receive applications, accompanied by an application fee of \$150 plus the cost to prepare the analysis of the proposed public improvement, or such other amount that the Council may, from time to time, set by resolution, for advance financed public improvements, and submit such 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. When the City, or other public entity, is the developer, the Council shall, by motion, direct the City 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 six months after start of work for the public improvement.

3.08.14 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 Council for review, discussion, and public hearing. Such 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, and a cost allocation plan to benefiting properties. If the improvement is in the City's Urban Growth Boundary, Marion County, the Stayton Fire District and other districts affected shall be provided a copy of the report by the City Administrator.

3.08.15 PUBLIC HEARING

Within a reasonable time after the public works department has completed its analysis and report to the City Administrator, an informational public hearing before the Council 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 improvements. 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 approved.

3.08.16 NOTIFICATION.

Not less than seven (7) nor more than thirty days prior to any public hearing being held pursuant to this Chapter, the developer, all benefiting property owners, and the general public (and, if the improvements are within the City's Urban Growth Boundary, then Marion County, the Stayton Fire District and any other district affected) shall be notified of such hearing and the purpose thereof. Public notice shall be accomplished by a written notice posted at the Stayton City Hall and such 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 two 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 considered 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.

3.08.17 ADVANCE FINANCING RESOLUTIONS AND AGREEMENTS.

After the public hearing held pursuant to section 3.08.15,

- A. If the Council desires to proceed with advance financing of a 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 to enter into an agreement between the developer and the City pertaining to the advance financed public improvement, and may, in such agreement, require such guarantee or guarantees as the City deems best to protect the public, benefiting property owners, and may make such other provisions as the Council determines necessary and proper.
- B. If the Council rejects the application, no further action shall be taken at that time.

3.08.18 ADVANCE FINANCED REIMBURSEMENT.

- A. **Advanced Financed Reimbursement Imposed.** An advance financed reimbursement is imposed on all benefiting property owners at such time as the owners apply for connection to advance financed public improvement, or apply for building permits for projects that utilize an advance financed public improvement.

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

1. If the advance financed public improvement is completed by a private developer, the reimbursement to the developer via the City shall be the total actual cost of the improvement, increased by seven percent annual simple interest, or such other interest rate as the Council may, from time to time, set by resolution, and applied to the cost allocation plan described in City Staff Analysis, Section 3.08.14;
2. If the advance financed public improvement is 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 entity pays to finance construction, and applied to the cost allocation plan described in City Staff Analysis, Section 3.08.14; or
3. If the advance financed public improvement is completed without the issuance of debt by the public entity, the reimbursement to the public entity shall be to the total cost of the improvement increased by the current interest rate private developers receive, as set forth in above subsection, and applied to the cost allocation plan described in City Staff Analysis, Section 3.08.14.
4. If inequities are created through the strict implementation of the above formulas 1, 2 or 3, 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-described permits, then the advance financed reimbursement is immediately due and payable upon the earliest date that any such 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 paragraph 2 of this subsection C. 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 docket 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, together with interest at the current legal rate, and the City's actual cost of serving notice upon the benefiting property owners. The lien shall be enforced in the manner provided by Oregon Revised Statutes 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 the subject property for the full amount of the advance financed reimbursement and the payment of that lien in twenty 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 value less the combined total principal balance and accrued interest on all prior liens. Upon receipt of such 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 record the lien in the City record of liens. From the time that docketing is completed, the City shall have a lien upon the subject property 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 Oregon Revised Statutes Chapter 223.

3.08.19 DISPOSITION OF ADVANCE FINANCED REIMBURSEMENTS.

Private developers shall receive a portion of 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 ten 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 five-year intervals for two five-year extensions beyond the initial ten-year period. Such reimbursement will be made by the City within ninety days of receipt of the advance financed reimbursements. Advance financed reimbursements not paid to 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.

3.08.20 RECORDING.

All advance financing resolutions shall be recorded by the City in the property records of Marion County, Oregon. Such resolution shall identify full legal description of the

benefiting properties. Failure to make such recording shall not affect the legality of an advance financing resolution or agreement.

3.08.21 PUBLIC IMPROVEMENTS.

Public improvements established 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 ten-year period, or any extension or extensions thereof, as set forth in section 3.08.18, shall be paid to the City to be used for related system improvement as authorized from time to time by the Council.

3.08.22 MULTIPLE PUBLIC IMPROVEMENTS.

Any advance financing application may include one or more public improvements.

3.08.23 DISPUTE RESOLUTION.

In the event of a dispute arising from a transaction prescribed in this Chapter, it shall first be addressed by mandatory mediation, the participants in which shall be all parties affected. If settlement cannot be reached, resolution shall be by binding arbitration and the prevailing party(ies) shall be entitled to arbitration fees and costs incurred.