

Chapter 3

PUBLIC IMPROVEMENTS

SPECIAL ASSESSMENTS

3.000 Council Authority--Petition by Owners.

(1) Whenever the council deems it expedient to construct, alter, repair, improve, widen or extend any street, alley, sidewalk, parking, curbing or any part thereof, or to construct, alter or install street lights, or to construct, improve, or repair any sanitary or storm sewer or water line or any part thereof, or to acquire, establish, construct or reconstruct any off-street motor vehicle parking facilities, or to construct, reconstruct or repair any flood-control facility, or to construct, reconstruct, repair, or equip a park, playground or neighborhood recreation facility, or any local improvement for which an assessment may be made on the property specially benefited, for which it is anticipated that special assessments will be levied, it shall by motion direct the city engineer or engineer retained by the city to make an investigation of such project and to submit a written report containing the information hereinafter specified.

(2) Whenever the owners of at least 60 percent of the front footage of the abutting property in any area consisting of at least 300 feet of road, or the owners of at least 60 percent of the property to be especially benefited, desire to form themselves into an improvement district for the purpose of accomplishing any of the objectives listed in subsection (1) of this section, they may by written petition request the council to direct the city engineer to submit a report as specified in subsection (1) of this section. The council, if satisfied the petition is signed

by the owners of at least 60 percent of the front footage of the abutting property or 60 percent of the property to be especially benefited within the district specified in the petition, may pass the requested motion. The petition referred to herein must be filed with the city administrator not less than ten days prior to any regular meeting of the council.

3.005 Report of Engineer. The city engineer or the engineer retained by the city shall file the report with the city administrator within the time specified by the council. At the discretion of the council the time for filing the report may be extended. The report shall contain the following:

(1) A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be included in the proposed improvement district;

(2) Estimated cost of the work to be done, including any legal, administrative and engineering costs attributable thereto; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the engineer may adopt the estimates of such agency;

(3) An analysis of the extent to which the proposed improvement benefits the entire city and a recommendation as to the method of determining the project costs that will be borne by the entire city.

(4) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;

(5) A statement of outstanding assessments against property to be assessed.

3.010 Action on Engineer's Report.

After the engineer's report has been filed with the city administrator, the council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvement, or it may abandon the improvement

3.015 Resolution and Notice of Hearing.

After approving the engineer's report as submitted or modified, the council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement and shall direct the city administrator to give notice of such improvement by posting at the city hall and at two places within the benefited area, and by mailing copies of such notice to the owners to be assessed for the costs of such improvement. The notice shall be mailed and posted, at least ten days prior to the public hearing on the proposed improvement. Said notice shall contain the following:

(1) A statement describing the proposed improvements, the area to be served, and the intention of the council to make such an improvement;

(2) The place and times at which the engineer's report on the proposed improvement may be examined;

(3) The date, time, and place of the public hearing on the proposed improvement;

(4) The procedure for presenting objections and remonstrances;

(5) The estimated total cost of that portion of the project to be financed by assessments to benefited properties.

3.020 Hearing and Action on Improvement. If, prior to or during the hearing, writ-

ten objections are received from owners representing two-thirds of the area to be assessed, the improvement proceedings shall be abandoned and shall not be subject to a further hearing for at least six months, unless the improvement is a sidewalk or an improvement unanimously declared by the council to be needed at once because of an emergency. The council, after receiving objections from owners representing not more than two-thirds of the area to be assessed may adopt or amend the engineer's report and, as amended, adopt the same by resolution. Having by resolution created a local improvement district of the area to be benefited by the proposed improvement, the council shall direct, in said resolution or by subsequent action, the city engineer or an engineer retained by the city to prepare detailed plans, specifications, and cost estimates for the proposed improvement.

3.025 Advertisement and Contract.

(1) The council shall review the final plans, specifications and cost estimate and, finding same to be consistent with the preliminary plans and cost estimates adopted in the engineer's report, shall by resolution adopt the final plans and specifications, and direct city personnel to construct the proposed improvements or direct the city administrator to advertise for bids on the project according to the final plans and specifications. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the city.

(2) If the council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is fifteen percent in excess of the engineer's estimate, it shall provide for holding a hearing of objections to proceeding with the improvement on the basis of such bid, and it shall direct the

city administrator to publish one notice thereof in a newspaper of general circulation in the city. Notice shall state the purpose, date, time, and place of said hearing. After the hearing the council shall determine whether said bid shall be accepted or rejected.

3.030 Preliminary Assessment. After the council by resolution has created a local improvement district, the council shall direct the city administrator to determine the proposed cost to each property benefited by the improvement. If assessment is to be made prior to construction of the improvement said cost determination shall be based upon the estimates contained in the engineer's report and said determination of proposed individual and specific property assessments shall be known as the preliminary preassessment roll. If assessment is to be made following construction of the improvement said determination shall be based upon actual construction costs and related costs and said determination of proposed individual and specific property assessment shall be known as the preliminary assessment roll. Notice of such proposed assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of assessment proposed on that property and shall fix a date by which time objections shall be filed with the city administrator. Such date shall be at least fourteen days from the date of the mailing or personal delivery of the notices. Any objection filed with the city administrator must state the grounds of the objection.

3.035 Final Assessment.

(1) The council shall consider all objections to the preliminary assessment roll which are timely filed with the city administrator, and after such consideration the council shall, by resolution levy, or amend and levy the proposed assessments presented

by the city administrator. Said assessments to be then known as either final assessment roll or final preassessment roll. Promptly after passage of the resolution levying the final assessments, the city administrator shall send by registered or certified mail a notice of final assessment to all owners of property being assessed.

(2) The notice of final assessment shall contain the following:

(a) A brief description of the improvement;

(b) The procedure for cash payment or for applying for financing.

(c) The final assessment levied on property owned by the recipient.

3.040 Method of Assessment. The council in adopting a method of assessment of the costs of the improvement may:

(1) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;

(2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited;

(3) Authorize payment by the city of all, or any part of, the cost of any such improvement, when in the opinion of the council the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the improvement.

3.045 Alternative Methods of Financing.

Nothing contained in sections 3.000 to 3.100 shall preclude the council from using any other available means of financing improvements, including federal or state grants in aid, revenue bonds, general obligation bonds, or any other legal means of finance. In the event

that such other means of financing improvements are used, the council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement according to the procedures provided in sections 3.000 to 3.100.

3.050 Remedies. Subject to the curative provisions of section 3.080 and the rights of the city to reassess as provided in section 3.085, proceedings for writs of review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein. A property owner who has filed written objections with the city administrator prior to the consideration by the city council of objections to the preliminary assessments, may have the right to apply for a writ of review based upon the city council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner if the facts supporting such claim have been specifically set forth in the written objections. A property owner who has filed written objection with the city administrator prior to the consideration by the city council of objections to the preliminary assessments, may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement has not been sent to the owner and if the owner did not have actual knowledge of the proposed improvement prior to the consideration by the city council of objections to the preliminary assessments, then the owner may file written objections alleging lack of jurisdiction with the city administrator within thirty days after receiving notice or knowledge of the improvement. No provision of this section shall be construed so as to lengthen any period of redemption or so as to affect the running of any statute of limitations. Any

proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the city council to remedy or cure the alleged errors or defects.

3.055 Lien Records and Foreclosure Proceedings.

After passage of the final assessment resolution by the council, the city administrator shall enter in the docket of city liens, a statement of the amounts assessed upon each particular lot, parcel of land or portion thereof, together with a description of the improvement, the name of the owners and the date of the assessment resolution. Upon entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land or portions thereof, which have been assessed for such improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at the rate of not to exceed ten percent per annum until paid on all amounts not paid within 30 days from the date of the assessment resolution; and, after expiration of 30 days from the date of such assessment resolution of the city, provided the owner has not applied for bancroft or other city approved financing, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state of Oregon; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state of Oregon to redeem such property.

3.060 Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of

the city administrator, who shall determine whether there has been an error in fact. If the city administrator shall find there has been an error in fact, he shall recommend to the council an amendment to the assessment resolution to correct such error, and upon enactment of such amendment, the city administrator shall make the necessary correction in the docket of city liens and send a correct notice of assessment by registered or certified mail.

3.065 Deficit Assessment. In the event that an assessment is made before the total cost of the improvement is ascertained, and if it is found the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare such deficit and prepare a proposed deficit assessment. The council shall set a time for a hearing of objections to such deficit assessment and shall direct the city administrator to publish one notice at least ten days prior to the hearing in a newspaper of general circulation in the city. After such hearing the council shall make a just and equitable deficit assessment by resolution, which shall be entered in the docket of city liens as provided by sections 3.000 to 3.100, and notices of the deficit assessment shall be posted and mailed and the collection of the assessment shall be made in accordance with applicable sections of sections 3.000 to 3.100.

3.070 Rebates. If, upon the completion of the improvement project, it is found the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the council must ascertain and declare the same by resolution, and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event any assessment has been paid, the person who paid the same, or his legal representative,

shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.

3.075 Abandonment of Proceedings. The council shall have full power and authority to abandon and rescind proceedings for improvements made under sections 3.000 to 3.100 at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the person paying the same, his assigns or legal representatives.

3.080 Curative Provisions. No improvement assessment shall be rendered invalid by reason of a failure of the engineer's report to contain all of the information required by section 3.005, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment resolution, the lien docket or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the owner of any property as required by sections 3.000 to 3.100, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears to the council that the assessment is unfair or unjust in its effect upon the person complaining; and the council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

3.085 Reassessment. When any assessment, deficit or reassessment for any improvement which has been made by the city has been, or shall be, set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any

federal court having jurisdiction thereof, or when the council is in doubt as to the validity of such assessment, deficit assessment, or reassessment, or any part thereof, then the council may make a reassessment in the manner provided by the laws of the state.

3.090 Bancroft Bonding Act. The provisions of ORS 223.205 through 223.295, commonly known as the Bancroft Bonding Act, are adopted and made a part hereof by reference.

3.095 Mailing of Notices. A notice shall be deemed mailed when it is sent to the owner's address shown in the county assessor's records, to the owner's last address known to the city, or to the owner at "Lafayette, Oregon".

3.100 Segregation of Assessments--Fees. Whenever an application has been made under the provisions of the Bancroft Bonding Act as adopted in section 3.090 and the application has been accepted and the payment of the assessment has been in fact financed by such procedure, the lien of such assessment may be segregated upon the following terms and conditions:

(1) The property for which the segregation is to be made shall have been assessed as a unit and entered accordingly in the docket of liens.

(2) There shall be no delinquent installments of principal or interest on the assessment of the entire parcel.

(3) Written application shall be made to the city in such form as may be required, and such applications shall be accompanied by the fees established as provided in this section. The written application must be submitted by the owner, mortgagee, or lien-holder of a parcel of real property that was formed from the partition or other division of the larger tract of real prop-

erty against which the assessment was originally levied. No apportionment shall be granted unless the applicant filed a true copy of the deed, mortgage, or instrument creating the new parcel or parcels.

(4) Apportionment of the assessment shall be made by the city administrator and approved by resolution of the city council. In accomplishing apportionment, the installments remaining unpaid shall be prorated among the smaller parcels so that each parcel shall be charged with the percentage of the remaining installment payments equal to the percentage of the unpaid assessment charged to the parcel upon apportionment.

(5) In order to help defray the costs of investigation, preparing legal descriptions, calculating an equitable division of the assessment and making lien docket entries, the city council may by resolution establish and from time to time amend a schedule of fees to be paid with any application filed under this section. Such fees shall not be refundable if the application is disapproved or the applicant withdraws his application.

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 administrator, 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.

Front footage. The linear footage of a lot or parcel owned by an intervening property owner which is contiguous to an advanced financed public improvement and on which the intervening property owner's portion of the advance financed reimbursement is calculated. Front footage shall be the amount shown on the most recent county tax assessor maps for the intervening property or, in the event such information is not available, any other reasonable method established by the city engineer for calculating front footage. Front footage excludes the front footage of property owned by the city, including rights-of-way but includes the development.

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.

3.155 Application.

(1) An application shall be required from a developer for city council approval of advance financing of public improvements. The application may be submitted before or after installation and acceptance of the advance financed public improvement by the city. 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, front footage of interven-

ing properties, the development, and a list of intervening property owners with current mailing addresses.

(c) The estimated reimbursement amount from each intervening property.

(d) The estimated date of installation if it's a pre-installation application or the date the city accepted the public improvement if it's a post-installation application.

(e) The estimated cost of the public improvement if it's a pre-installation application or the actual cost of the public improvement as determined by receipts, invoices and other documents satisfactory to the city engineer if it's a post-installation application.

(3) The application may be submitted to the city prior to the installation of the public improvement but not later than 180 days after such installation. The city administrator may grant one 90-day extension prior to the expiration of the 180-day period for good cause.

3.160 Report. Upon receiving the application, the city administrator shall review the advance financing proposal and submit a report to the city council for its review and discussion at a public hearing. The report shall include a map showing the location and front footage of intervening properties and the development. The report shall also include the city engineer's analysis of whether the estimated actual cost of the public improvement is reasonable, the estimated advance financed reimbursement due from each intervening property owner, and whether the public improvements will or have met city standards.

3.165 Public Hearing. Within a reasonable time after the city administrator

has completed the report required in section 3.160, the city council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed advance financed public improvement. 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.

3.170 Notification of Public Hearing. Not less than 10 nor more than 30 days prior to any public hearing held pursuant to sections 3.150 to 3.210, the developer and all intervening property owners shall be notified of the public hearing and its purpose. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be effective on the date that the letter of notification is mailed. Failure of the developer or any intervening property owner to be so notified shall not invalidate or otherwise affect any advance financing resolution or the city council's action to approve the same.

3.175 Advance Financing Resolutions and Agreements. After the public hearing held pursuant to section 3.165, if the city council desires to proceed with an advance financed public improvement, it shall pass an advance financed resolution. The resolution shall state whether the public improvement is installed. The resolution shall designate the advance financed improvement(s) and provide for advance financed reimbursement by intervening property owners pursuant to sections 3.150 to 3.210. When the developer is other than the city, the advance financing resolution shall instruct the city administrator

to enter into an agreement with the developer pertaining to the advance financed public improvements. The agreement shall contain the following provisions:

(1) The advance financed public im-provements shall meet all applicable city standards.

(2) The total advance financed reim-bursement shall not exceed the actual cost of the 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 sections 3.150 to 3.210.

(7) If the public improvement is not installed at the time the resolution is adopted, the city administrator shall not enter into the agreement until such time as the city accepts the public improvement.

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 include a copy of the resolution, the date it was adopted and a short explanation of sections 3.150 to 3.210.

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 the advance financing reimbursement calculated as follows:

(a) The actual cost of the advance financed public improvement, increased by nine percent annual simple interest from the date of execution of the advance financed agreement, or such other percentage that the city council may specify in the advance financing resolution, multiplied by the percentage of front footage of the total front footage of intervening property owned by the intervening property owner.

(b) If the city council determines that a particular intervening property owner is inequitably treated under the formula above, it may modify the reimbursement on a case-by-case basis for any intervening property owner.

(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.

(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 administrator 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 administrator to give notice of that hearing to each of the identified intervening property owners, together with a copy of the city administrator'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 administrator's report. If the city council accepts or rejects the city administrator'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.

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 Yamhill 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 is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the city.

3.220 Definitions

(1) City: The city of Lafayette, Oregon.

(2) Person: Individual, corporation, association, firm, partnership, joint stock company, and similar entities.

(3) Public rights-of-way: Include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

3.225 Jurisdiction. The city of Lafayette has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the city charter and state laws.

3.230 Scope of Regulatory Control. The city has jurisdiction and exercises regulatory control over public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way

was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

3.235 City Permission Requirement. No person may do work in, occupy or encroach on a public right-of-way without the express permission of the city received in writing. The city grants permission to use rights-of-way by franchises, licenses and permits.

(a) Permission to use rights-of-way shall be obtained solely through the city administrator's office.

(b) The city administrator may impose such standards as are necessary to maintain the condition of city rights-of-way as are necessary in the circumstances.

(c) Weight limits for certain public ways may be set by the city administrator which are consistent with the condition, construction characteristic and load bearing ability of a public right-of-way.

3.240 Failure to Repair or Restore Right-of-way--Infraction.

(1) Any person, contractor, surveyor, permittee or licensee who excavates, drills, bores, or does any such work on, or to, any street or sidewalk on a public right-of-way in the city shall restore at his/her expense the street and sidewalk in a manner satisfactory to the city. Failure or refusal to get a permit and failure to properly restore the street or sidewalk is hereby declared to be a Class "C" infraction.

(2) Any person who places or permits the placement of debris (dirt, rock, or other material which adversely affects the roadway or endangers traffic) on the right-of-way shall wash, sweep or otherwise remove said debris from the street. Failure or refusal

to wash, sweep or remove debris is hereby declared to be a Class "C" infraction.

3.245 Obligations of the City. The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

STREETS, SIDEWALKS AND PUBLIC PLACES

3.250 Installation or Excavation--Permit Required.

(1) No person, firm, or corporation shall drill any holes in or cut any city street or sidewalk, engage in any excavation, grading, surfacing, or paving operation or activity in the city, or install or construct any sanitary sewer, storm sewer, water main or pipeline, or any other public utility or public improvement in the city without first securing a permit therefor from the city administrator or his designee. Permits will be issued only upon approval by the city engineer of plans, profiles, and specifications for the proposed construction.

(2) The fee for each permit issued under the provisions of sections 3.250 to 3.280 shall be set by resolution of the council and shall be due and payable at the time of the permit. In addition to the permit fee, there shall be a charge to cover the costs of plan review and inspection of the work by the city to assure compliance with city standards and specifications, an amount to be set by the city based on the estimated construction costs as determined by the city engineer or his designee. The city shall keep accurate records of the time and costs incurred in such review and inspections, and upon completion of the project, and its acceptance by the city, any amount remaining in the inspection

charge shall be refunded to the permittee. Any cost incurred by the city in excess of the amount of the inspection charge shall be billed to the permittee and shall be due and payable prior to approval and acceptance of the project by the city. Time spent in plan review and inspection shall be billed at an hourly rate to be set by the city.

(3) Sections 3.250 to 3.280 shall not apply to duly franchised utilities whose operations are controlled by franchise ordinances adopted by the city.

(4) Sections 3.250 to 3.280 shall not apply to contractors performing work under a contract let by the city. Work of such contractors shall be governed by the conditions of such contract.

3.255 Street Contractor's License.

(1) Any person, firm, or corporation who engages in the business, operation, or practice of constructing streets, sanitary sewers, storm sewers, water mains, or pipelines or any other device or structure within the right-of-way of any street dedicated to public use within the city shall obtain a city license as a street contractor prior to engaging in such work.

(2) Street contractor's licenses shall be issued by the city administrator upon application therefor being submitted with an annual license fee in an amount set by resolution of the council together with evidence and statement of experience to show to the satisfaction of the city administrator, that the applicant is qualified to engage in such work.

(3) A licensed street contractor shall execute and deliver to the city a dual-obligee surety bond to be approved by the city, in the amount of ten thousand dollars in favor of the city, conditioned that he will perform all street work in accordance with the regulations and ordinances of the city, and that he will indemnify and save the city

harmless against all expenses, damages, costs, and claims arising out of any negligence in the performance of such work, and further guaranteeing such work against any failure or deterioration due to faulty workmanship or materials for a period of one year from the date of its acceptance by the city. This requirement shall not be applicable as to street work in a subdivision where a performance bond, irrevocable letter of credit, cash deposit, or maintenance bond is posted pursuant to the community development code and to the satisfaction of the city for all required public improvements including street improvements.

(4) A licensed street contractor shall have and keep in full force and effect property damage and liability insurance in the amounts of \$1,000,000 property damage, and \$1,000,000 personal injury while performing any work in the city. A certificate of such insurance shall be filed with the city. *[Amended by Ord 499 on Sep 10, 1998]*

(5) The license of any street contractor may be revoked by the city council upon presentation of evidence of his failure to comply with any and all regulations of the city.

3.260 Standards. All street, sanitary sewer, storm sewer, water main and pipeline construction and any other construction within streets in the city shall be in accordance with the "Standard Specifications for Public Works Construction" as published by the Oregon Chapter of the American Public Works Association or in accordance with any special provisions established by the city engineer.

3.265 Street Sections and Construction Details. Standard street sections and standard construction details shall be as specified in city's standard drawings. No deviation from

these standard drawings will be allowed without the approval of the city engineer.

3.270 Engineer's Approval in Phases.

Each phase, layer, or source of work shall be approved by the city engineer prior to the placement or construction of any subsequent phase, layer, or course. Failure to comply with this section shall be cause for requiring the removal and replacement of that phase, layer, or course which was placed without approval of the preceding course.

3.275 Contractor--Appointment of Project Superintendent.

A street contractor shall employ competent and experienced workmen and foremen and for each project or contract shall designate a project superintendent who will be responsible for coordinating with the city on all aspects of the work.

3.280 Contractor--Submission of Plans.

(1) A street contractor, or the person, firm, or corporation employing the street contractor, shall be responsible for the preparation of, and submission to the city for approval, all plans and specifications covering any work in any city street.

(2) These plans and specifications are to be prepared by, and bear the seal of, a registered professional engineer. All grade, line, and other control stakes shall be set by this engineer or his duly authorized representative.

STREET/UTILITY DESIGN AND CONSTRUCTION STANDARDS

3.300 Street/Utility Design and Construction Standards Adopted. This section establishes and provides specific, technical direction for the design and construction of all streets and associated utility projects within the city. The adoption of these

standards provides a comprehensive set of design and construction practices that should guarantee the delivery of high-quality improvements to the citizens of Lafayette. These street/utility design and construction standards shall be adopted by, and may be amended by, resolution of the council. These standards shall be known as the "City of Lafayette Public Works Design Standards". The Public Works Design Standards are on file under separate cover at city hall. A fee required by said standards shall be established by resolution of the city council. Fees now adopted shall continue until amended or repealed by council action.

SIDEWALK MAINTENANCE

3.350 Definition of "Sidewalk."

"Sidewalk" means the part of the street right-of-way between the curblines or the lateral lines of a roadway and the adjacent property lines as have been improved to City standards, and includes a culvert located in a part of the street.

3.355 Repair of Sidewalks.

It is the duty of the owner of land abutting a sidewalk to maintain at his expense the sidewalk in good repair and safe condition.

3.360 Liability for Sidewalk Injuries.

(1) The owner of real property abutting a sidewalk is liable to any person injured because of failure by the owner to maintain the sidewalk in good repair or safe condition.

(2) If the city is required to pay damages for an injury to any person caused by the failure of an owner to maintain a sidewalk in good repair or safe condition, the owner shall reimburse the city for the amount of the damages thus paid, and for the attorney fees and costs of defending against the claim for damages. The city may maintain an

action in court to enforce the provisions of this section.

3.365 Standards and Specifications.

Sidewalks shall be constructed, altered, and repaired in accordance with the standards and specifications contained in the Public Works Design Standards, as amended, which standards have been adopted by resolution of the council pursuant to Ordinance 483. *[Amended by Ord 499 on Sep 10, 1998]*

3.370 Submission of Plans. No person shall construct, alter, or repair a sidewalk without first submitting the plans and specifications for the proposed work and obtaining a permit. The application for a permit shall be made to the city administrator. The city administrator may issue a permit for the proposed work upon finding that the plan conforms with the applicable standards and specifications.

3.375 Supervision of Work. The construction, alteration, or repair of sidewalks shall be under the supervision of the public works superintendent. The public works director may inspect materials and construction details that in the public works director's judgment may be necessary to ensure compliance with the plans and the applicable standards and specifications.

3.380 Notice to Construct, Alter, or Repair Sidewalk.

(1) When the council determines that a sidewalk needs construction, alteration, or repair, it shall by resolution direct the city administrator to issue a notice.

(2) The notice shall require the owner of the property abutting the sidewalk to complete the work within 60 days after service of notice. The notice shall also state that if the work is not completed by the owner within the 60 days, the city reserves the right

to complete it and assess the cost against the property abutting the sidewalk.

(3) The city administrator shall cause a copy of the notice to be served personally upon the owner of the property abutting the sidewalk, or the notice may be served by registered or certified mail, return receipt requested. If after diligent search the owner is not discovered, the city administrator shall post a copy of the notice in a conspicuous place on the property, and the posting shall be considered to have the same effect as personal service of notice upon the owner of the property.

(4) The person serving the notice shall file with the manager a return of service, reciting the time, place, and manner of service.

3.385 City May Construct, Alter, or Repair Sidewalk.

If the sidewalk alteration or repair is not completed within 60 days after service of the notice, the public works director may complete it if so directed by the council. On completion of the project, the public works director shall submit a report to the council containing an itemized statement of costs.

3.390 Assessment for Sidewalk Work

Done by City. After receipt of the report, the council, by ordinance, shall assess the cost of the work against the property abutting the sidewalk. The assessment shall be a lien against the property and may be levied and collected in the same manner as is provided for in the city's general local improvement assessment procedures.

3.395 Sidewalk Construction Requested by the Property Owner.

If a property owner petitions the council for an order to build a sidewalk on the part of the street abutting on his or her property, agrees to pay cash or to make application to pay the cost in

installments as provided by ORS 223.205, waives the right of service and publication of notice of construction, and consents to the assessment of the property upon which the sidewalk abuts, the council may order the construction of the sidewalk.

PARK PERMITS

3.396 Park permits. The City Administrator shall be authorized to issue a temporary permit for the exclusive use by any individual, corporation, group, association, company or family to use all, or any part, of a city park, or the facilities in a city park, for a company or family picnic, a special program, a community event, a class or training program, or other event which, in the opinion of the City Administrator, would serve any recreational or educational purpose for which the city's park system is intended. Application for a park permit shall be on a form approved by the City Administrator. The application form shall describe the area in the park and/or the park facilities being reserved by the permit for the exclusive use of the applicant. Notice of any such restricted use area and/or facilities may be given by posting the permit at the park or having the signed application in the applicant's possession while the park and/or facilities are in use. Interference with the exclusive right to use all, or any part of a park, or park facilities, pursuant to a valid park permit, after being given proper notice of the permit, shall be a Class B violation and the offending person may be required to leave the park until the permit expires.

3.397 Park Permit Fee. A fee of \$100 shall be paid in advance by the applicant for a park permit, unless the fee is waived by the City Administrator. The fee, or any part of it, may be waived for any applicant that is a government or non-profit agency. The first

\$50 of the fee, if any, is non-refundable. The balance, if any, shall be refundable to the applicant, but only if the park and/or park facilities are left by the applicant in the same, or better condition than they were found when the permit was issued. Any litter, garbage, vandalism, damage to the park or landscaping, damage to park facilities, or any other such problem resulting from use pursuant to a park permit shall result in all of the deposit becoming non-refundable. After documenting in writing on the city's copy of the park permit the nature of the problem resulting in forfeiture of the refundable part of the deposit, the city may keep all of it as a non-exclusive means of cleaning up the park, repairing the damage, or curing the problem.

REIMBURSEMENTS FOR IMPROVEMENTS

3.400 Purpose. The purpose of this Chapter is to provide a mechanism where property owners who benefit from the construction of public improvements by another person will share in the cost of those improvements through payment of a reimbursement fee at the time of connection or initiation of development activity that would otherwise require extension of public utilities and transportation improvements per the Lafayette Zoning & Development Ordinance (LZDO). This Chapter provides a mechanism for the City to examine the improvements which are constructed, their cost, and the properties which are specially benefited by them, and will provide a reasonable method of apportioning the reimbursable costs among benefited property owners. The purpose of this Chapter of the Municipal Code is not to encourage development, but to ensure that development pays for its share of benefits.

3.401 Definitions. The following terms are definitions for the purposes of this section:

Applicant means a person, a defined above, who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement. The “applicant” may be the city.

City means the city of Lafayette.

City Engineer or Engineer means the person holding the position of city engineer or any officer or employee designated by that person to perform duties stated within this section.

Front Footage means the linear footage of a lot or parcel owned by an property owner which is served by a reimbursement district public improvement and on which the property owner’s portion of the reimbursement is calculated. Front footage shall be the amount shown on the most recent county tax assessor maps for the property or, in the event such information is not available, any other reasonable method established by the city engineer for calculating front footage. Front footage excludes the front footage of property owned by the city, including rights-of-way, but includes the development.

Parcel of Land or Parcel means a platted lot or any other tract of land which is occupied or may be occupied by a structure or structures or other use, including the yard and other open spaces required under the LZDO, or reasonably attributable to an existing or proposed use.

Person means a natural person, the person’s heirs, executors, administrators, or assigns; a firm, partnership, corporation, association or legal entity, its or their

successors or assigns; and any agent employee or any representative thereof.

Property Owner means the owner of the title to real property or the contract purchaser of real property of record as shown on the most recent assessment roll in the office of the County Assessor.

Public Improvement means any construction, reconstruction or upgrading of water, sanitary sewer or storm sewer lines or appurtenances thereto, public streets (including bicycle lanes) or sidewalks or undergrounding of public utilities.

Reimbursement Agreement means the agreement between an applicant and the city which is authorized by the city council and executed by the city administrator providing for the installation of and payment for reimbursement district public improvements.

Reimbursement District means the area which is determined by the city council to derive a benefit from the construction of street, water or sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

Reimbursement Fee means the fee required to be paid by a resolution agreement. The city council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, waste or sewer improvement within the reimbursement district.

Sewer Improvement means a sewer system or sewer line improvement and related pumping facilities (located within public right-of-way and/or City utility easement) which is designed, constructed, and installed in accordance with City design and construction standards, including but not limited to extending a sewer line to property, other than property owned by the applicant,

so that sewer service can be provided for such other property without further extension of the line.

Street Improvement means a street or street improvement (located within public right-of-way) which is designed, constructed, and installed in accordance with City design and construction standards, including but not limited to streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public right-of-way.

Storm Drainage Improvement means a storm sewer line (other than along a Street Improvement) or artificial drainageway or improvement (located within public right-of-way and/or City utility easement) which is designed, constructed, and installed in accordance with City design and construction standards, including but not limited to extending a storm line to property, other than property owned by the applicant, so that storm drainage service can be provided for such other property without further extension of the facility.

Water Improvement means a water system or water line improvement (located within public right-of-way and/or City utility easement) which is designed, constructed, and installed in accordance with City design and construction standards, including but not limited to extending a water line to property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the line.

Utilize means to apply for a building permit which will use or increase the use of a public improvement, to connect to a public improvement, or to otherwise increase the use of an improvement.

3.405 Application for a Reimbursement District.

(1) Any person who is required to or chooses to finance some or all of the cost of a street, storm, water or sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the city engineer, request that the city establish a reimbursement district. The street, storm, water and sewer improvements must include improvements in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval and must be available to provide service to property other than property owned by the applicant. Examples include, but shall not be limited to, off-site sidewalks, connection of street sections for continuity, and extension of water, sewer and storm lines. Improvements, or portions thereof, determined to be eligible for SDC Credits, or other reimbursement, are excluded.

(2) The city may also initiate formation of a reimbursement district, which initiation shall not be subject to the provisions of paragraph (4) of this section.

(3) The application shall include the following:

- a) Detailed plans showing the actual location, nature, and extent of all improvements for which a reimbursement fee is sought. These plans shall be used to determine the basis of the reimbursement fee, except that final approved as-built plans shall be used for applications submitted after completion of construction;
- b) The parcels of property identified by tax lot number which the applicant asserts are specially benefited by the improvements, and from which a reimbursement fee is sought;
- c) The name and mailing address of the owner of each parcel identified

in paragraph b) of this subsection, according to the County Assessor's most recent property tax assessment rolls;

d) Detailed engineering estimates and material costs. These estimates shall be used to determine the basis of the reimbursement fee, however, the actual reimbursement fee shall be based on the developer's actual incurred costs as indicated by detailed invoices for labor and materials devoted exclusively to the improvements for which a reimbursement fee is sought to be established. Costs shall not include any amount of "profit" or "overhead" of the person making the application, nor any costs for repair of defective work constructed by the developer. The applicant shall certify the accuracy of the costs which are submitted to the City and that the applicant has actually paid or financed such costs. The applicant shall have the burden of establishing and documenting the cost of improvements. Should the City Engineer determine the contract amounts exceed prevailing market rates for a similar project, the reimbursement fee shall be based upon market rates. No more than 15% of the total eligible construction cost shall be creditable for survey, engineering, construction management, and administrative costs. No more than 3% of the total eligible construction cost shall be creditable for legal and financial costs;

e) Any other relevant information required by the City Engineer; and

f) A non-refundable application fee as established by Council resolution.

(4) The application may be submitted to the City prior to the installation of the public improvement but not later than 180 days after completion and acceptance of the street, water or sewer improvements. However, the City Administrator shall have

the discretion to waive this requirement upon a showing by the applicant of good cause for the delay.

3.410 Engineer's Report.

(1) The City Engineer shall review each application for the establishment of a reimbursement district and shall determine whether a reimbursement fee should be established. The City Engineer's recommendation to the City Council shall be in writing and shall address the following factors:

a) The extent to which the improvements have relieved another person(s) of the future requirement to construct all or a portion of the same improvements;

b) The area or parcels which are specially benefited by the improvement, and whether or not such parcels would, as a condition of future development be required to construct all or any portion of the same improvement for which a reimbursement fee is sought;

c) That portion of the cost of the improvement within the area of the proposed reimbursement district which is appropriate for reimbursement by the owners of property identified in paragraph b) of this subsection;

d) A rational formula for apportioning the cost of the improvement among properties within the proposed reimbursement district;

e) The results of applying the formula referred to in paragraph d) of this subsection to the parcels identified in paragraph b) of this subsection, which becomes the proposed reimbursement fee.

(f) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data

necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

(g) Post-construction: the date the city accepted the public improvements. Pre-construction: the estimated date of completion of the public improvements.

3.415 Amount to be Reimbursed.

(1) The cost to be reimbursed to the applicant shall be limited to the cost of construction, including the acquisition and condemnation costs of acquiring additional right-of-way outside the development boundaries, the cost of permits, engineering and legal expenses, and the annual fee adjustment fixed and determined by the city council.

(2) A reimbursement fee shall be computed by the city for all properties which have the opportunity to utilize the improvements, including the property of the applicant for formation of a reimbursement district. The fee shall be calculated separately for each type of improvement. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant.

3.420 Public Hearing.

(1) Within a reasonable time after the city engineer has completed the report required in section 4.410 of this code, the city council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, 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 a resolution approving and forming the reimbursement district shall be adopted.

(2) If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the city. At that time, the city council may modify the resolution to reflect the actual cost of the improvement.

3.425 Notice of Public Hearing. Not less than 10 nor more than 30 days prior to any public hearing held pursuant to this code, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the city councils action to approve the same.

3.430 City Council Action.

(1) After the public hearing held pursuant to subsection 4.120(1) of this code, the city council shall approve, reject, or modify the recommendations contained in the city engineer's report. The city council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include a city engineer's report as approved or modified, and specify that payment of the reimbursement fee, as designed for each parcel, is a precondition of receiving city permits applicable to development of that parcel as provided for in section 4.450 of this code.

(2) When the applicant is other than the city, the resolution shall instruct the city administrator to enter into an agreement with the applicant pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement, at a minimum, shall contain the following provisions.

(a) The public improvement(s) shall meet all applicable city standards.

(b) The total amount of potential reimbursement to the applicant.

(c) The total amount of potential reimbursement shall not exceed the actual costs of the public improvement(s).

(d) The annual fee adjustment shall be calculated based on the Engineering New Record (ENR) 20 cities Construction Cost Index.

(e) The applicant shall guarantee the public improvement(s) for a minimum period of 12 months after the date of installation, or longer as required by the Lafayette Public Works Construction Standards.

(f) The applicant shall defend, indemnify and hold harmless the city from any and all losses, claims, damage, judgments, or other costs or expense arising as a result of or related to the city's establishment of the district.

(g) The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners.

(h) Other provisions as the city council determines necessary and proper to carry out the provisions of this code.

(3) If a reimbursement district is established by the city council, the date of the formation of the district shall be the date that

the city council adopts the resolution forming the district.

3.435 Notice of Adoption of Resolution.

The city shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee.

3.440 Recording the Resolution.

The city recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the county recorder so as to provide notice to potential purchasers of property within the district. Said recording shall not create a lien. Failure to make such recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

3.445 Contesting the Reimbursement District.

No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of charge designated for each parcel, shall be filed after 60 days following the adoption of a resolution establishing a reimbursement district.

3.450 Obligation to Pay Reimbursement Fee.

(1) The applicant for a permit related to property within any reimbursement district shall pay to the city, in addition to any other applicable fees and charges, the reimbursement fee established by the city council, together with the annual fee adjustment, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the city for any of the following activities:

(a) To apply for a building permit which will use or increase the use of a public improvement;

(b) To connect to a public improvement or otherwise increase the use of a public improvement.

(2) "Increase the use" means:

(a) For sanitary sewer or storm sewer lines: to make a physical change requiring a building or development permit which increases the volume discharged into that line.

(b) For water lines: to make a physical change required a building or development permit which increases the amount of water uses.

(c) For public streets: to make a physical change required a building or development permit on the property which increases the trips on the street or creates a new entrance onto the street.

(3) The city's determination of who shall pay the reimbursement fee is final. Neither the city nor any officer or employees of the city shall be liable for payment of any reimbursement fee, annual fee adjustment, or portion thereof as a result of this determination.

(4) A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Noting in this code is intended to modify or limit the authority of the city to provide or required access management.

(5) No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in this section of the code unless the reimbursement fee,

together with the annual fee adjustment, has been paid in full. Where approval is given as specified in subsection (1) above, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

(6) The date when the right of reimbursement ends shall not extend beyond five years from the district formation date. Upon application for an extension by the applicant, the city council may, by resolution, authorize up to two (2) five-year extensions of the right of reimbursement under the agreement.

(7) The reimbursement fee is immediately due and payable to the city by property owners upon utilization of a public improvement. If connection is made or construction commenced without required city permits, then the reimbursement fee immediately due and payable upon the earliest date that any such permit was required. No city permit of any kind for the property shall be issued until the reimbursement fee is paid in full.

(8) Whenever the full reimbursement fees has not been paid and collected for any reason after it is due, the city administrator shall report to the city council the amount of the uncollected reimbursement, the legal description of the property on which the reimbursement is due, the date upon which the reimbursement was due and the property owner's name or names. The city council shall then, by motion, set a public hearing date and direct the city administrator to give notice of that hearing to each of the identified property owners, together with a copy of the city administrator's report concerning the unpaid reimbursement fee. 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 administrator's report. If the city council accepts or rejects the city administrator's

report and determines that the reimbursement fee 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 reimbursement fee shall prohibit any issuance of permits by the city for that property.

(9) Failure on the part of the City to collect the reimbursement fee at the time the property owner applies for permits or applications for development will not relieve the property owner of the obligation. Should an error or omission be discovered, payment of the reimbursement fee will be due upon notification by the City.

3.455 Public Improvements. Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the city.

3.460 Multiple Public Improvements. More than one public improvement may be the subject of a reimbursement district.

3.465 Collection and Payment: Other Fees and Charges.

(1) Developers shall receive all reimbursement collected by the city for their public improvements. Such reimbursement shall be delivered to the developer for as long as the reimbursement district agreement is in effect. Such payments shall be made by the city within 90 days of receipt of the reimbursements.

(2) The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the city.

3.470 Public Improvements.

1) No person may cause, maintain or use a connection to a utility improvement for which a reimbursement district fee has been

established and which is due and payable, unless such reimbursement fee has first been paid.

2) Violation of this section is a civil infraction, punishable by a fine not to exceed \$500. Each day that a prohibited connection or use exists constitutes a separate violation.

3) The remedies provided under this section are cumulative to any other remedies provided by law.

3.475 Fees Imposed—Tax Limitations.

The city council finds that the fees imposed by this code section are not taxes subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

[Sections 3.400-3.475 added by Ord. 568 on March 11, 2004]