

**ORDINANCE 364**

**AN ORDINANCE FOR THE CITY OF DRAIN,  
OREGON, REGULATING THE FINANCING OF  
PUBLIC IMPROVEMENTS**

**RECITALS:**

**WHEREAS**, Chapter X, Section 34 of Drain’s City Charter allows for the fixing, levying, and collecting of special assessments against real property for public improvements or other public services; and

**WHEREAS**, the Drain City Council desires, to the extent allowed by the Oregon Constitution and the full extent authorized by the Oregon Legislative Assembly, to exercise its authority to create alternative methods for the financing of public improvements; and

**WHEREAS**, the Drain City Council, after careful consideration, has determined that alternative financing mechanisms for public improvements are needed to serve and protect the interest of the Citizens of Drain.

**THEREFORE, THE COMMON COUNCIL OF THE CITY OF DRAIN ORDAINS AS FOLLOWS:**

**SECTION 1. SHORT TITLE:** This Ordinance shall be known as the “Advanced Financed District” ordinance for the City of Drain.

**SECTION 2. DEFINITIONS:** As used in this Ordinance, unless the context requires otherwise, the following shall be defined as:

2.1 “Actual Cost” shall mean all direct or indirect costs incurred by the City in order to deliver goods and services or to undertake a public improvement. The “actual cost” of providing goods or services to a property or a property owner includes the cost, or an allocated portion of the total amount of the actual cost, of making a good or service available to the property owner, whether stated at a minimum, fixed, or variable amount. “Actual Cost” includes, but is not limited to, the cost of labor, materials, attorney fees, supplies, equipment rental, property acquisition, permits, financing, engineering, administration, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payments of amounts necessary to meet debt service coverage requirements.

2.2 “City” means the City of Drain, Oregon.

- 2.3 “Council” means the Drain City Council.
- 2.4 “Manager” means the City Recorder, City Manager or City Administrator of the City of Drain.
- 2.5 “Recorder” means the recorder, clerk or other person or officer of the City of Drain serving as a clerk of the City or performing clerical work of the City, or other official or employee as the governing body of the City shall designate to act as recorder.
- 2.6 “Advance Financing” means a developer’s or the City’s payment for the installation of one or more public improvements installed pursuant to this ordinance which benefiting property owners may utilize upon reimbursing a proportional share of the cost of such improvement.
- 2.7 “Advanced Financing Agreement” means an agreement between a developer and the City, as authorized by the City Council, and executed by the Manager, which agreement provides for the installation of, and payment for, advance financed 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.
- 2.8 “Advanced Financing Resolution” means a resolution passed by the Council and executed by the Manager 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 determined in the best interest of the public by the Council.
- 2.9 “Benefiting Property Owner” means the free holder of record of the legal title to real property which, by virtue of installation of an advance financed public improvement, may be served, all or in part, by the same. Where such real property is being purchased under a recorded land sales contract, then such purchasers shall also be deemed owners.
- 2.10 “Developer” means the City, an individual, a partnership, a joint venture, a corporation, a subdivider, a partition of land or any other entity, without limitation, who will bear, under the terms of this chapter, the expenses of construction, purchase installation, or other creation of a public improvement.
- 2.11 “Proportional Share” means the amount of advanced financed reimbursement due from the benefiting property owners calculated in accordance with Section 10.
- 2.12 “Capital Improvements” means: (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 storm drains, (4) water improvements, (5) sanitary sewer Improvements, or (6) any other public improvement authorized by the Council.

**SECTION 3. PURPOSE:** The purpose of this ordinance is to ensure: (1) orderly new development by providing methods to finance necessary public improvements, and (2) that necessary public improvements are installed concurrently with, or before, the new development occurs.

3.1 The purpose of this ordinance is also to allow the City to require that new developments pay for installation costs of these necessary public improvements, to assure that they are installed in accordance with the adopted master plan, and to reimburse developers and/or the City for a share of costs incurred if a development or improvement provides access to public improvements for other benefiting property owners.

**SECTION 4. APPLICABILITY:** When a development is to occur at locations where approved master planning documents show new public improvements, the Council may condition its approval of subdivisions, land partitions, and conditional use permits to require that the customer enter into an advance financing agreement when the Council deems such an agreement will best protect the public and promote the general welfare of the City. The developer, at his option, may alternatively elect to be reimbursed by negotiating with the City for reimbursement of added public improvements, where provisions and funds for such negotiations exist, or by completing the public improvement without reimbursement, or by a combination of methods.

4.1 In accordance with Section 3, the City Council may determine that an advance financed public improvement will best protect the public and promote the general welfare of the City by ensuring orderly new development. In the absence of a development application, the Council may, by motion, designate the City or other public entity as the developer and direct the Manager to prepare an advance financing application.

**SECTION 5. RECEIPT OF APPLICATION:** The Council will receive applications at the City Office, accompanied by an application fee of six hundred and forty dollars (\$640.00), or such other amount and schedule that the City may, from time to time, set by resolution for advance financed public improvements. Applications shall also be accompanied by: (1) maps depicting tax lot and assessor's information, (2) an address list identifying affected adjacent properties and owners, (3) engineering drawings approved by the Council, (4) project engineer's cost estimate or actual cost in cases where the improvement has been constructed, and (5) three independent bids or a project cost agreed upon by the developer and the Council.

5.1 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 costs. When the City or other public entity is the developer, the Council shall, by motion, direct the Manager to submit the application to the City Office without fee.

**SECTION 6. DIRECT ANALYSIS:** Upon receipt of the application for advance financed public improvements, Manager or its designee shall make an analysis of the advance financed public improvements and shall prepare a report to be submitted to the Council for review, discussion, and public hearing. Such report shall include those items submitted as part of the application package identified above.

**SECTION 7. PUBLIC HEARING:** Within a reasonable amount of time after the Manager has completed his/her analysis, an informational public hearing shall be held in which all parties and the general public shall be given the opportunity to express their views and ask questions pertaining to the advance financed public improvement. Since advance financed public improvements do not give rise to assessments, the public hearing is for informational purposes only and is not subject to mandatory termination due to remonstrances. The Council has the sole discretion, after the public hearing, to decide whether or not an advance financing resolution shall be passed.

**SECTION 8. NOTIFICATION:** Not less than ten or more than thirty days prior to any public hearing being held pursuant to this section, the developer, all benefiting property owners, and the general public shall be notified of such hearing and the purpose thereof. Public notice shall be accomplished by a written notice posted at the City Office 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 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 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 approve the same.

**SECTION 9. ADVANCED FINANCING RESOLUTION AND AGREEMENT:** After the public hearing, held pursuant to Sections 7 and 8, if the Council desires to proceed with an advance financed public improvement, it shall pass an advanced financing resolution accordingly. The resolution shall designate the improvement as an advance financed public improvement and provide for advance financed reimbursement by benefiting property owners pursuant to this ordinance. When the developer is a private developer, the Council will enter into an agreement between the developer and the City pertaining to the advance financed public improvement and may, in such an 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.

**SECTION 10. ADVANCED FINANCE REIMBURSEMENT:** An advance financed reimbursement is imposed on all benefiting property owners at such time as the owners apply for access or connection to the advance financed public improvement or apply for building permits for projects that utilize an advance financed public improvement.

10.1 **Rates.** Benefiting property owners shall pay advance financed reimbursement as calculated by the use of any method of appointing the actual cost, or estimated actual cost, to be assessed is just and reasonable among the properties determined to be specifically benefitted and consistent with the Oregon Constitution and Oregon Laws.

10.1.1 If the advance financed public improvement was completed by the City, the reimbursement to the City shall be the total cost of the improvement increased by seven percent (7%) annual simple interest (or such other interest rate as the Council may, from time to time, set by resolution) including the use of: 1) any just and reasonable method of determining the extent of the advanced finance district boundaries consistent with the benefits derived, (2) the use of any method of appointing the actual cost among the properties to be specifically benefitted which is just and reasonable, and 3) if, in the opinion of the Council, there is a general public benefit which will result from the public improvement, or when the Council otherwise believes it to be just and reasonable, the City may contribute funds towards the local improvement.

10.1.2 If the advance financed public improvement was completed without the issuance of debt by the City, the reimbursement to the City shall be up to the total cost of the improvement increased by the interest rate, as set forth above, multiplied by a percentage of front footage owned by benefiting property owners of the total front footage of the advance financed public improvement.

10.1.3 Advanced financing reimbursement for odd-shaped lots shall be individually established and consistent with the benefit received by the lots in the area. If inequities are created through the strict implementation of the above formulas, the Council may modify its impact on a case-by-case basis.

10.2 **Collection.** The advance financed reimbursement is immediately due and payable by benefiting property owners upon their application for connection to an advance financed public improvement or any building permit the result of which will utilize any advance financed public improvement. If connection is made or construction commenced without the above-mentioned permits, then the advance financed reimbursement is immediately due and payable upon the earliest date that any such permit was required.

10.2.1 No permit for connection shall be issued until the advance financed reimbursement is paid in full or otherwise processed in accordance with this ordinance. Whenever the full and correct advance financed reimbursement is due and has not been paid and collected for any reason, the Manager 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 Council, by motion, shall then set a public hearing and shall direct the Manager to give notice of the hearing to each of those benefiting property

owners, together with a copy of the Manager's report concerning the unpaid reimbursement, either in person or by certified mail. At the public hearing, the Council may accept, reject, or modify the Manager's report; and if it finds that any reimbursement is unpaid and uncollected, the Council, by motion, may direct the City Officer to record the unpaid and uncollected reimbursement in the County record of liens. Upon completion of the recording, the City shall have a lien against the described land for the full amount of the unpaid advance financed reimbursement, interest, and the City's actual cost of serving notice upon the benefiting property owners. The lien shall be enforced in the manner provided by Oregon Revised Statutes (ORS) Chapter 223.

10.3 Whenever an advance financed reimbursement is due and collectable, the benefiting property owner may, as an option to paying the charge in full, apply for payment installments in the manner provided for in ORS 223.205 through 223.295 using forms provided at the City Office.

10.4 **Disposition of Advance Financed Reimbursements.** Developers shall receive advance financed reimbursements collected by the City pertaining to their respective advance financed public improvements. Such reimbursement shall be delivered to the developer for a period of twenty (20) years from the date of the applicable advance financing agreement has been executed. Such reimbursement will be made by the City within ninety days of receipt of the advance financed reimbursements. Advance financed reimbursements not paid the developer under the terms of this ordinance shall be retained by the City to be used for related system improvements as authorized from time to time by the Council.

10.5 **Recording.** All advance financed resolutions shall be recorded by the City in the deed records of Douglas County. Such resolutions shall identify full legal descriptions of the benefiting properties. Failure to make such recordings shall not affect the legality of an advance financing resolution or agreement.

10.6 **Public Improvements.** Public improvements installed pursuant to advance financing agreements shall become and remain the sole property of the City pursuant to the advance financing agreements and advance financed reimbursement, not paid to the developer during the ten-year period, as set forth in Section 10.5, shall be paid to the City to be used for related system improvements as authorized from time to time by the Council.


10.7 **Multiple Public Improvements.** More than one public improvement may be the subject of an advanced financing agreement or resolution.

**SECTION 11. ASSESSMENT OF PUBLIC PROPERTY:** Whenever all or any part of the cost of public improvements is to be assessed as the property benefitted thereby, benefitted property owned by the City, County, School District, State and any political subdivision thereof shall be assessed in the same manner as private property. The amount of the assessment shall be paid by the City, School District, County or State, as the case may be, provided that the cost of the improvements are, in any given case of the type that may be bonded under this Ordinance.

11.1 In the case of property owned by the State, the amount of the assessment shall be certified by the Manager and filed with the Executive Department of the State of Oregon as a claim for reference to the Legislative Assembly in the manner provided by Oregon law unless funds for the payment of the assessment have otherwise been provided by law.

**SECTION 12. SEVERABILITY:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof. This Ordinance is intended to be as broad as allowed under Oregon Law and construction of the Ordinance or any portion should be made in favor of the policy of upholding the City's advanced financing ordinance.

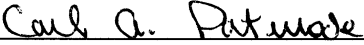
PASSED AND ADOPTED THIS 14<sup>th</sup> DAY OF April, 1997.

 4-17-97

Brad Borigo, Mayor, City of Drain

DATE:

ATTEST:

 4-17-97  
Carl Patenode, City Administrator DATE