

ORDINANCE NO. 98-02

AN ORDINANCE PROVIDING A METHOD OF
PRIVATE FINANCING OF PUBLIC IMPROVEMENTS

THE CITY OF MANZANITA DOES ORDAIN AS FOLLOWS:

SECTION 1. SCOPE AND POLICY. The intent of this Ordinance is to provide an orderly process for the extension and financing by private means of public improvements within the boundaries of the City. It is the general policy of the City that the cost of construction of such extensions shall be borne by the property owners whose properties will be benefited by the installation of such public improvements, since public improvements are deemed to enhance the value of adjacent property, as distinguished from benefits diffused throughout the City. Nothing in this Ordinance, however, shall be construed to prevent the City in its sound discretion from participating in the financing of extensions where such participation is within the then current financial capabilities of the City, and is deemed to be in its best interest. All extensions shall be constructed according to the construction standards of the City, and the City shall be the sole owner of such extensions.

SECTION 2. DEFINITIONS. The following words and phrases used in this Ordinance shall have the meanings set forth in this section, whether appearing in capital or lower case form:

BENEFITOR: An owner of property subsequently benefited by the acts of an extendor.

CITY: City of Manzanita, an Oregon municipal corporation, acting through its City Council, or through any board, committee, body, official or person to whom the City Council shall have delegated the power to act for or on behalf of the City. Unless a particular board, committee, body, official or person is so designated in this Ordinance, action by the City shall mean action by the City Manager of the City, or his duly authorized representative or agent.

CONSTRUCTION: Any one or more of the following: Preliminary feasibility planning; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; or the inspection or supervision of any of the foregoing items.

COST OF CONSTRUCTION: In the computation of costs of making any extensions, all costs shall be included, whether the work is done by bid, by contract, or by personnel of the City, or any combination thereof. Costs shall include engineering, legal, secretarial and administrative services; land or easement acquisition; and labor and materials.

EXTENDOR: A person who finances an extension of one or more public improvements.

LOTS OR PARCELS: Plots of land as they appear on the maps of the Assessor of Tillamook County.

OWNER: The owner of the record title to real property; or, if there is a contract of sale of the property, the contract purchaser of record as shown in the office of the Tillamook County Assessor.

PERSON: An individual, partnership, joint venture, trustee, limited liability company, or corporation.

PROPERTY: A single lot, or two or more contiguous lots under common ownership.

PUBLIC IMPROVEMENTS: Water lines, together with all appurtenances thereto; public street improvements including grading, rocking and paving, and storm drainage culverts.

REMONSTRANCE: A written objection to a specified project and financing plan signed by the owner of property subject to a proposed apportionment fee.

SUBDIVISION: An act of subdividing land; or an area or a tract of land as defined in ORS 92.010.

Other terms used shall have their ordinary definition, or shall be as set out in other Ordinances of the City.

SECTION 3. EXTENSION OF PUBLIC IMPROVEMENTS WITHIN SUBDIVISIONS. The owners of property within proposed subdivisions shall pay all costs of construction within the boundaries of the proposed subdivision and the provisions of this Ordinance shall not be applicable.

SECTION 4. EXTENSION OF PUBLIC IMPROVEMENTS TO OTHER PROPERTIES. Extension of public improvements may be financed by one of the following methods:

- (a) Owner of the property may assume all costs of construction, waiving any right to recover any costs from other property owners directly benefited.
- (b) A voluntary group of some or all of the owners of properties to be directly served or benefited may jointly assume all costs of construction, waiving any right to recover any part of such costs from any other property owners directly benefited.
- (c) The person who is an owner of property or properties may elect to finance an extension of 200 feet or greater, thereby making public improvements available to properties other than his/her own, without waiving any rights to recover a portion of the costs.
- (d) Formation of a local improvement district for special assessments.

SECTION 5. EXTENSIONS FINANCED BY PROPERTY OWNERS (EXTENDORS).

A property owner may privately finance public improvements to his property as provided in Section 4(a) through 4(c), above. Extendor, however, shall be a single legal entity. Extendors seeking cost participation by benefitors shall, at the time of submission of project plans and specifications to the City for approval, petition the City in writing for "reimbursement under the terms of Section 4(c)", and:

- (a) Provide an estimated breakdown of all construction costs for which partial reimbursement is sought;
- (b) Provide an apportionment map or plat no smaller than 11" x 17" showing the general nature, extent, and location of the extension and the lands to which the extendor is requesting the City Council to apportion costs. This map shall be separate and distinct from the engineering and construction drawings prepared for the project;
- (c) Provide, for each parcel for which special benefits are to be allegedly received and for which apportionment of costs is requested, a recommended apportionment roll, consisting of the:
 - (1) parcel description;
 - (2) name and address of owner of record;
 - (3) recommended cost apportionment stated as a dollar amount and as a percentage of total costs.
- (d) Provide a deposit as established in Section 16 of this Ordinance.
- (e) Provide a waiver per Section 20 of this Ordinance.

SECTION 6. COUNCIL ACTION UPON RECEIPT OF EXTENDOR'S PETITION.

- (a) After the extendor's petition and cost apportionment plan have been filed in the office of the City Manager, the City Manager shall, within 30 calendar days, approve the plan, modify the plan and approve it as modified, require the extendor to supply additional or different information, or deny the plan.
- (b) If the plan is modified or denied by the City Manager, the extendor may appeal such modification or denial to the City Council. Any such appeal must be filed in writing with the City Manager within 15 calendar days of notice of modification or denial, and shall be reviewed by the City Council at its next regular meeting.
- (c) Upon approval of the plan, the City Council shall declare its intention to apportion project costs, and shall describe the boundaries of the area within which owners will share in the costs, and direct the City Manager to give notice of hearing on the plan.

(d) Notice of the hearing shall be posted in at least 2 conspicuous places in the area directly benefited by the extension at least 14 calendar days prior to the hearing, and shall be mailed by certified mail at least 15 days prior to the hearing to each owner of benefited property, and published once in a newspaper of general circulation prior to the hearing. The notice shall contain a statement that:

- (1) The approved report of the extendor is on file in the office of the City Manager and is subject to public examination;
- (2) Gives a narrative description of the proposed construction and its location;
- (3) The City Council will hold a public hearing on the proposed improvement on a specified date which shall not be earlier than 10 days following the publication of notice, at which time objections and remonstrances to the apportionment plan will be heard by the City Council;
- (4) Gives a description of each property to be specially benefited, either specifically, or by reference to an instrument recorded with Tillamook County which specifically describes the boundaries; together with an estimate of the unit cost to each property, the total cost of the improvement, and a statement that these costs are estimates and subject to revision after construction is completed; and,
- (5) No apportioned payment will be due until such time as the benefited property applies for connection to the City water system, but that such connection will not be permitted until the payment, without interest, is made.

SECTION 7. REMONSTRANCES. All remonstrances must be in writing and filed with the City Council not later than the scheduled hearing. Remonstrances shall be limited to:

- (a) whether or not the property proposed to be served by the extension will be benefited by it;
- (b) estimated costs; or
- (c) method of apportioning costs.

No project shall be precluded from construction solely because remonstrances have been filed.

SECTION 8. DETERMINATION AT HEARING. At the hearing the City Council shall determine whether the property proposed to be served by the extension will be benefited by such extension, and whether the costs proposed to be apportioned are reasonable and the method of apportionment equitable. The Council may then order the adoption of an ordinance specifying the boundaries of the area, the method of apportioning the cost of construction, and the method of financing the construction.

SECTION 9. NOTICES. All notices required shall be sent by certified mail to the owner of record, at the address shown on the records of the Tillamook County Tax Assessor. Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional nor invalidate the proceedings.

SECTION 10. APPORTIONMENT BY CONSENT AND WAIVER. When the owner or owners of all of the property to be benefited by an extension requests the extension in writing to the City Manager and gives written consent to its construction, waiving all objections, the City Council may adopt an ordinance apportioning the real property for the cost of all or a portion of the extension without further notice or hearing.

SECTION 11. APPORTIONMENT OF COSTS. Within 10 calendar days after the City's acceptance of the completed public improvements, the extendor shall submit to the City Manager an itemized statement of all project costs for which reimbursement is sought, together with documentation thereof. Within 30 calendar days, the City Manager shall determine the final apportioned costs for each benefitor's property. Notice of the proposed final cost apportionment shall be sent to the owner of each lot proposed to be charged. The notice shall state the apportionment proposed on that property, and shall fix a date not less than 15 calendar days from the date of the notice by which time objections shall be filed with the City Manager. Any objection shall state the grounds thereof. The City Council shall consider such objections and may adopt, correct, modify or revise the proposed apportionments.

SECTION 12. NOTICE OF APPORTIONMENT. Within 10 calendar days after the order of apportionment of costs has been adopted, the City Manager shall send a notice of apportionment to the owner of the affected property. The notice shall set forth a description of the property, the name of the owner of the property, and the amount of each apportionment, together with a statement that the apportionment will not bear interest, will constitute a lien upon the property for 10 years, and must be paid before connection of the property to the City water system will be made. All apportionments shall be paid to the City of Manzanita, and a receipt shall be issued therefore.

SECTION 13. RECORDATION OF APPORTIONMENTS. After the issuance of an order making the apportionment by the City Council, a copy of the ordinance making the apportionment, certified by the City Manager, shall be recorded with the Clerk of Tillamook County. The ordinance shall include a statement that no connection to the City water system shall be permitted to any of these properties until the amounts shown, without interest, have been paid, or a release by the extendor has been filed with the City.

SECTION 14. SATISFACTION NOTICES. The City Council shall order the satisfaction of the notices against lands on which apportionment costs have been paid or released by the extendor, or after 10 years have passed since project acceptance, and a copy of such ordinance shall be recorded. No benefitor shall be obligated to pay an apportionment after 10 years from the date of adoption of the ordinance specified in Section 8.

SECTION 15. ERRORS IN APPORTIONMENT CALCULATIONS. Claimed errors in the calculation of apportionments shall be called to the attention of the City Manager. If the City

Manager shall find there has been an error in fact, he/she shall recommend to the City Council an amendment to the assessment ordinance to correct such error, and upon enactment of such amendment, the City Manager shall make the necessary correction. The City Manager shall record the correction and shall send a correct notice of apportionment by certified mail to the owner of the property assessed.

SECTION 16. DEPOSITS. When a petition is received for apportionment of costs of an extendor, the City Manager shall require a non-refundable deposit to be made by the extendor filing such petition, before any action on the petition shall be begun. Such deposit shall be in an amount of \$50.00 per parcel from which reimbursement is sought and shall compensate the City for costs incurred in evaluating the report on the proposed project and notifying property owners. Additional expenses shall be billed as they are accrued. All expenses due to the City must be paid before notice of apportionment is recorded.

SECTION 17. CALCULATION OF COSTS TO PROPERTY OWNERS.

(a) Where costs are to be divided among owners, the City, in adopting a method of apportionment of the costs of the improvements, may:

- (1) Use any just and reasonable method of determining the extent of any improvement, consistent with the benefits derived;
- (2) Use any method of apportionment that is just and reasonable among the properties determined to be specially benefited;
- (3) Authorize payment by the City of all, or any part of, the benefited properties' cost of any improvement when, in the opinion of the City 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.

(b) Nothing contained in this Ordinance shall preclude the City from using any other available means of financing improvements, including federal or state grants-in-aid, charges or fees, revenue or general obligation bonds, or any other means of finance.

SECTION 18. ABANDONMENT OF PROCEEDINGS. In the event the extendor does not complete the public improvements within 12 months of the date of adoption of the ordinance specified in Section 8, the City Council shall have full power and authority to abandon and rescind proceedings for apportionment made under this Ordinance at any time prior to the final completion of such improvements.

SECTION 19. PAYMENTS TO EXTENDORS.

(a) The City shall, within 20 calendar days of receipt of apportionment payments from benefitors, disburse these funds to the extendor. Only a payment of the total amount owing will be accepted by the City. Any arrangements for installment payments must be made between extendor and benefitor, and extendor must file a release with the City allowing connection. Once connection has been made, the City shall have no further obligation for collection or for denial of connection.

(b) An administrative fee of \$50.00 shall be charged and withheld from each disbursement. All disbursements shall be made to the last address of extendor on file with the City. If disbursement cannot be made within 12 months of receipt because of the failure of extendor to file a valid current address with the City, the payment shall be returned to the payor. There shall be no interest charged or paid.

SECTION 20. LIABILITY OF AUTHORITY. Notwithstanding any provisions of this Ordinance, the City shall have no liability to any extendor for payment of any portion of his/her costs. The City will make every reasonable effort to insure that no benefited properties are connected to the City water system until apportionments owing have been paid, but in the event such connection is made, the City shall have no obligation to pay those apportionments, nor to collect them for the extendor. The extendor will be required to sign a waiver of claim against the City before any project utilizing the provisions of this Ordinance shall be commenced.

SECTION 21. INTERPRETATIONS -PURPOSE AND CONFLICT. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the orderly private extension of public improvements needed for the promotion of public safety, health and welfare. It is not intended by this Ordinance to interfere with, abrogate, annul or repeal any Ordinance, rules or regulations previously adopted which are not in conflict with any of the provisions of this Ordinance. This Ordinance is intended only to provide an alternative financing choice for extendors, and does not legislate or control land use policies relating to extensions. It is the intent of the City Council that this Ordinance not be construed as a land use ordinance, and that any appeal from any decision of the City Council be taken to the Circuit Court for Tillamook County, and it shall be deemed notice to all owners of property of the terms and conditions under which extensions shall be funded.

SECTION 22. SEPARABILITY. Each section and each provision or requirement of any section of this Ordinance shall be considered separable, and the invalidity of any portion shall not affect the validity or enforceability of any other portion.

SECTION 23. CURATIVE PROVISIONS. No extension apportionment shall be rendered invalid by reason of failure of the City Council-approved extendor's report to contain all of the information required in this Ordinance; or by reason of a failure to have all of the information required to be in the improvement resolution, the apportionment ordinance or the 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 this Ordinance; 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 that the apportionment is unfair or unjust in its effect upon the person complaining. The City Council shall have the power and authority to remedy and correct all such errors by suitable action and proceeding.