



ORDINANCE NUMBER 2021-04

**AN ORDINANCE OF THE CITY OF MOLALLA, OREGON
REPEAL OF CHAPTER 13.16 ADVANCE FINANCING OF PUBLIC
IMPROVEMENTS IN THE MOLALLA MUNICIPAL CODE AND REPLACE
WITH REVISED CHAPTER 13.16 ADVANCE FINANCING OF PUBLIC
IMPROVEMENTS**

WHEREAS, Staff recommends under Title 13 Public Services that section 13.16 Advance Financing of Public Improvements be repealed in its entirety and a newly revised code section 13.16 Advance Financing of Public Improvements be codified into the Molalla Municipal Code; and

WHEREAS, the Molalla City Council reviewed the new code during its Work Session meetings on February 10, 2021 and March 10, 2021 and directed staff to prepare an Ordinance for adoption.

Now, Therefore, the City of Molalla does ordain as follows:

Section 1. Chapter 13.16 Advance Financing of Public Improvements be repealed and replaced with Chapter 13.16 Advance Financing of Public Improvements herein attached.

Section 2. Effective date. The effective date of the code revision will take place thirty (30) calendar days after adoption of the Ordinance.

Read the first time on **March 24, 2021** and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on **March 24, 2021**.

Signed by the Mayor on _____.

Scott Keyser, Mayor

ATTEST:

Christie DeSantis, City Recorder

Chapter 13.16 ADVANCE FINANCING OF PUBLIC IMPROVEMENTS

13.16.010 Purpose.

The purpose of this chapter is to provide a method of financial reimbursement to developers for a share of costs incurred from installation or construction of public improvements for other non-participating, benefitting property owners.

13.16.020 Definitions.

The following are definitions for the purposes of this chapter and for all the purposes of any advance financing agreement entered into pursuant to this chapter and for any actions taken as authorized pursuant to this chapter or otherwise:

“Advance finance agreement” means an agreement between a developer and the City, as authorized by the City Council, and executed by the City Manager, which agreement provides for the installation of and payment for advance financed public improvements and which agreement contains improvement guarantees, provisions for reimbursement by the benefitting property owners who may eventually utilize such improvement, inspection guarantees, and the like, as determined in the best interest of the public by the City Council.

“Advance financing” means a developer’s payment for the installation of one or more public improvements installed pursuant to this chapter which benefitting property owners may utilize upon reimbursing a proportional share of the cost of such improvement.

“Advance financing resolution” means a resolution passed by the City Council designating a public improvement to be an advance financed public improvement and containing provisions for financial reimbursement by benefitting property owners who eventually utilize the improvement and such other provisions as determined in the best interest of the public by the City Council.

“Benefiting property” means that real property benefitting from an advance financed public improvement.

“City” means the City of Molalla.

“City Council” means the City Council of Molalla.

“Developer” means an individual, a partnership, a joint venture, a corporation, a subdivider, a partitioner of land or any other entity, without limitation, who will bear, under the terms of this chapter, the expense of construction, purchase, installation, or other creation of a public improvement.

“Development” means that real property being developed by the developer and for which property the advance financing resolution is passed.

“Owner” means the fee holder of record of the legal title to the real property in question. Where such real property is being purchased under a recorded land sales contract, then such purchasers shall also be deemed owners.

“Public improvement” means the following:

1. The construction, reconstruction or upgrading of any water, sanitary sewer, or storm sewer system improvements.
2. The grading, graveling, paving or other surfacing of any street, or opening, laying out, widening, extending, altering, or changing the grade for construction of any street.
3. The construction or reconstruction of curb and gutter or sidewalks.

4. Those “capital improvements” as provided in Oregon Revised Statutes 223.299(1) as now written or hereafter amended.

5. Any other public improvement authorized by the City Council.

13.16.030 Receipt of application.

A. A developer or other person seeking reimbursement for the advance financing of a public improvement shall submit an application to the Public Works Director on a form provided by the City.

B. The application shall include the following:

1. A description of the location, type, size, and cost of the public improvement to be advance financed.
2. A map showing benefitting properties, front footage and areas of benefitting properties, the development, and a list of benefitting property owners with current mailing addresses.
3. The estimated reimbursement amount from each benefitting property based on the formula proposed for the reimbursement.
4. The estimated date of the city’s acceptance the public improvement.
5. The estimated cost of the public improvement and other documents satisfactory to the City Engineer.
6. Legal description of the properties within the Developer’s proposed Assessment Reimbursement Area together with the names and addresses of the owners of such property as shown on the records of the Clackamas County Assessor’s Office
7. Colorized or hatched construction drawings depicting the reimbursable public improvements, as required by the Public Works Department.

C. The application must be submitted no less than **90 calendar days** prior to the Public Works Department’s acceptance of construction of the improvements for which reimbursement is being requested. Failure to submit an application on or before the deadline waives Developers right to apply for and receive reimbursement for public improvements.

D. The application shall be accompanied by a fee set by resolution by the City Council. The fee will be applied against the City’s administrative costs for reviewing and processing the application, including but not limited to analysis of the proposed advance financing project, notice to affected property owners, recording costs and other related costs.

13.16.040 Utility analysis.

Upon receipt of the advance financing application, the Public Works Department shall analyze the proposal and submit a report to the City Manager for City Council review and public hearing. Such report shall include a map showing the location and dimensions of the development and all benefitting properties. The report shall also include the City Engineer’s estimate of the total cost of the advance financed public improvement. 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 benefitting property owner, and whether the public improvements will or have met city standards.

13.16.050 Public hearing.

Within a reasonable time after the City Manager has completed their review of the Public Works Department's analysis, an informational public hearing shall be held in which all parties and the public shall be given the opportunity to express their views pertaining to the proposed advance financed public improvement. Since advance financed public improvements do not give rise to assessments, the public hearing is for informational purposes only, and is not subject to mandatory termination due to remonstrances. The city council has the sole discretion after the public hearing to decide whether an advance financing resolution shall be adopted.

13.16.060 Notification.

Not less than ten (10) nor more than thirty (30) days prior to any public hearing being held pursuant to this chapter, the developer and all benefitting property owners shall be notified of such hearing and the purpose thereof. Such notification shall be 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 of the City Council's action to approve or not approve the same.

13.16.070 Advance financing resolutions and agreements.

A. After the public hearing is held pursuant to Section 13.16.050, if the City Council decides that the application meets the purposes of this chapter, it may pass an advance financing resolution. The resolution shall designate the proposed public improvement and provide for the payment of an advance financed reimbursement fee by benefitting property owners pursuant to this chapter. The resolution shall indicate the amount of the reimbursement fee for each benefitting property. The resolution also shall instruct the City Manager to enter into a reimbursement agreement with the applicant to include such guarantee or guarantees as the City Manager deems necessary to protect the public interest and benefitting property owner. The agreement also may include such other provisions as the City Council determines necessary and proper to carry out the purposes of this chapter. More than one public improvement may be the subject of a single advance financing agreement or resolution.

B. The city shall notify all benefitting 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 this Chapter.

13.16.080 Advance finance reimbursement.

A. An advance financing reimbursement shall be imposed on all benefitting properties, at such time as such owners apply for connection to advance financed facilities or apply for building permits for projects that use an advance financed public improvement, in an amount established in the advance financing reimbursement resolution and shall be collected as set forth in this section.

B. The amount of the advance financed reimbursement fee allocated to each benefitting property shall be calculated as follows:

1. Square Footage Method. The total actual cost of the advance financed public improvements, plus a percentage that the City Council may set by resolution, multiplied by a percentage of the benefitting property owner's percentage of ownership of the total acreage served by the advance financed public improvement including the development. If inequities are created by the strict implementation of the above formula, the council may modify the formula on a case-by-case basis.

2. Front Footage Method. The total actual cost of the advance financed public improvement, plus a percentage that the City Council may set by resolution, multiplied by a percentage of front footage owned by the intervening or future property owner of the total front footage served by the advance financed public improvement including the development. If inequities are created by the strict implementation of the above formula, the council may modify the formula on a case-by-case basis.

C. The advance financing reimbursement fee is immediately due and payable by a benefitting property owner upon application for connection to the advance financed public improvement or any building or development permit the result of which will be the use of any advance financed public improvement; provided however, that a building permit to add to or remodel an existing structure which does not increase the use of an advance financed street will not cause payment to be due. If connection is made without obtaining the permits required to connect to the public improvement, then the advance financed reimbursement fee is immediately due and payable upon the earliest date that any such permit was required. A permit for connection shall not be issued until the advance-financed reimbursement is paid in full.

D. Notwithstanding the requirement in paragraph 13.16.080 C to pay the reimbursement fee prior to connecting to the public improvement, the City Manager may in his or her sole discretion defer payment of the reimbursement fee to a date prior to the issuance of a certificate of occupancy for a structure located on the benefitting property. If the City Manager elects to defer payment under this section, a certificate of occupancy may not be issued until the reimbursement fee is paid in full.

E. Whenever the full and correct advance financed reimbursement has not been paid and collected for any reason, the City Manager shall report to the City Council the amount of the uncollected reimbursement, the description of the real property to which the reimbursement was due and the name or names of the benefitting property owners. The City Council shall then set a public hearing and shall direct the City Manager to give notice of the hearing to each benefitting property owner, either in person or by certified mail. If the City Council determines the reimbursement fee is due and has not been paid, the City Council may authorize such action as it determines appropriate to collect the unpaid amounts. However, the City may not impose a lien against the benefitting property or other property for the unpaid amounts.

13.16.090 Disposition of advance financed reimbursements.

A. Pursuant to the terms of the reimbursement agreement, the City shall collect reimbursement fees as provided in Section 13.16.080 and forward the amounts to the person responsible for the advance-financed public improvement. The City may retain an amount not less than one percent (1%) for the cost of administering the payments. The reimbursement fees shall be delivered to the developer for a period of not more than 10 years from and after the date the applicable advance financing agreement has been executed. Payments will be forwarded by the City within 90 days of receipt of the advance-financed reimbursement fees. The City shall incur no liability for any failure to remit advance financing reimbursement fees pursuant to the requirements of this section.

B. Notwithstanding the payment formula provided above, no developer shall receive both advance financing reimbursement and a credit against system development charge payments for oversizing of the same facility. An application for advance financing reimbursement shall, if approved, constitute a waiver of such system development charge credits.

13.16.100 Recording.

All advance financing resolutions shall be recorded by the City in the deed records of Clackamas County, Oregon. Such resolutions shall identify the legal description of the development and benefiting properties. Failure to make such recording shall not affect the legality of an advance financing resolution or agreement.

13.16.110 Ownership of public improvements.

Public improvements installed pursuant to advance financing agreement shall become and remain the sole property of the city pursuant to the advance financing agreement.

13.16.120 Waiver of claims.

No developer shall have any claim against the city in the event this chapter is, for any reason, found invalid or unlawful. An application for advance financing shall constitute a waiver of such claims.

13.16.130 Multiple public improvements.

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