

CITY OF BAY CITY

Ordinance No. 576

AN ORDINANCE PROVIDING FOR PAYMENT AND APPORTIONMENT OF THE COST OF EXTENDING WATER LINES, SEWER LINES AND STREETS NOT LOCATED WITHIN SUBDIVISIONS OR PLANNED DEVELOPMENTS BY PROPERTY OWNERS BENEFITING FROM SUCH EXTENSIONS, REPEALING ORDINANCE NO. 550 AND DECLARING AN EMERGENCY.

The City of Bay City ordains as follows:

Section 1. Purpose. The purpose of this ordinance is to provide alternative procedures to those now provided by ordinance or law for the extension of water, sewer and street improvements not located within subdivisions, cluster or planned developments or required thereby by property owners benefiting from such extensions.

Section 2. Repeal. Bay City Ordinance No. 550 and all other ordinances and resolutions in conflict with this ordinance are hereby repealed.

Section 3. Extension of Service. When the City ordinance requires extension of sewer or water trunk or lateral lines or streets to service the property, or when a developer/applicant applies for a building permit which requires the extension of such services which will benefit other property owners, the Council may provide for the extension by:

- 3.1 By the procedures provided in this ordinance; or
- 3.2 Formation of a Local Improvement District as allowed by statute; or
- 3.3 By any other method which the Council deems in the best interests of the City.

Section 4. Payment of Extension. In the event new water lines, sewer lines or street extensions are required to serve developer/applicant's property, said developer/applicant will be required to have the extensions already installed at the time of the building permit application. This ordinance does not apply to extensions with subdivisions, cluster or planned developments, or improvements required as a condition of approval for such developments, subject to Article 5 of the Bay City Development Ordinance or any amendments thereto.

Section 5. Refund of Extension Costs. If any person or legal entity is required by the City to pay the costs of sewer, water or street extensions which are adjacent to and benefit property other than that of the developer/applicant making the extensions by making

service available for such other property, then the developer/applicant shall be eligible for recovery of the extension costs in accordance with this ordinance. This right of recovery extends to the City to the extent that the City pay all or a part of the cost of the extension improvements.

Section 6. Exemptions from Extension Contributions. The following are exempt from contributions:

6.1 Any property owner, with a currently existing residential or commercial use that is already provided with all services, shall be exempt from making a prorata contribution.

6.2 Any property owner of bare land with water, sewer or improved road service available to it shall be exempt from any prorata contributions for those services already available to it shall be exempt from any prorata contributions for those services already available to the land. In order to be exempt, "available" service is defined as service that meets City standards and is useable in its current state. If the property does not have all services available to it, the property owner shall be required to pay their prorata portion of the new services.

6.3 Any City owned land that is benefited.

Section 7. Procedures for Cost Reimbursement.

7.1 When a water, sewer or street extension is completed, the City Public Works Superintendent or the City Engineer, as may be appropriate, shall certify in writing to the City that the project has been completed.

7.2 Except as provided in Section 13 of this Ordinance, the developer/applicant shall have six months from the certification in 7.1 to submit to the City a copy of the bills for all recoverable costs and evidence of their payment. Recoverable costs shall include, but not be limited to, the costs of engineering, advertising for bid, notices, survey, materials, labor, equipment inspection and other necessary expenses. Interim interest profit and overhead, cost of the applicant's or principal's labor and installation costs of all services not provided by the City (such as cable, electrical telephone, etc.) are not recoverable costs. There shall be no recovery allowed for any costs associated with substandard streets. Other costs not listed herein shall be determined by the Council as to whether or not they are recoverable. If developer/applicant does not comply with this provision within six months from the certification in 7.1, developer/applicant shall not be eligible for cost recovery of the project extension.

7.3 The developer/applicant shall submit to City his/her proposal for the apportionment requested from each benefited parcel at the time of submission of the bills to the City set forth in 7.2.

7.4 The Council shall conduct a public hearing on the proposed apportionment of the cost. The City shall send written notice to each of the property owners of the benefited properties of the proposed apportionment of the cost of the improvements at least ten days before the public hearing. Notices shall be mailed to the addresses provided by the County Tax Department. Failure of the benefited property owner to receive a notice shall not invalidate the apportionment for the costs of the improvements.

Section 8. Ordinance of Apportionment. After notice and public hearing, the Council shall determine the total cost of the improvements, the cost of apportionment to each benefited lot, and the legal description of each lot.

8.1 The Council is not bound by the developer/applicant's apportionment proposal. The amount to be apportioned shall be determined by the Council. Except as provided in Section 9.2 of this ordinance, no interest shall accrue on the reimbursement amounts.

8.2 The prorata contribution may be based upon the lineal street frontage of each property along the public street or right of way and may consider the cost incurred by the original applicant, the cost incurred by the benefited property owner and any other relevant factors. The overriding consideration of the council is that the apportionment be fundamentally fair, given all the circumstances. The final appointment shall be done by ordinance. The ordinance shall specifically state the completion date to the improvements and set forth the total cost of improvements and the apportionment for each benefited lot.

8.3 The costs incurred by the City, including any engineering fees and attorney fees incurred in preparation of the apportionment ordinance and determining the appropriate apportionment, shall be paid by the applicant/developer prior to the adoption of the ordinance. Failure to pay said costs to the City relieves the City from any obligation to proceed on the developer/applicant's request.

8.4 The apportionment ordinance shall be recorded with the Tillamook County Clerk.

Section 9. Payment of Apportionment Share. Any benefited property subject to paying an apportionment share shall be required to pay said amount at the time the benefited property applies for a building permit for new construction and before the benefited property is connected to sewer or water service.

Benefited property owners shall pay their share as follows:

9.1 In full at the time of applying for a new construction building permit, or

9.2 Payment of an administrative fee equal to 10% of the owner's apportionment share directly to the City of Bay City for its administrative fee, and, in addition, payment of the apportionment share in installments with conditions as may be

approved by the Council and with interest at the legal interest rate prorated over the installment period of not more than ten years, all payable to the City of Bay City. All principal and interest shall be payable to the City and forwarded to the developer/applicant less the administrative fee.

9.3 The apportioned share of costs for extensions shall be in addition to and not in lieu of any service connection fees or charges now or hereafter imposed by the City.

Section 10. Time Limit. The right to require such refund shall expire fifteen (15) years after the date of final installation of the extension or extensions. All apportionments shall be deemed null and void after this time.

Section 11. Address of Applicant. The developer/applicant originally paying for the extension shall have the obligation of providing the City with his/her address for fifteen (15) years after the installation of the extension. If the person cannot be found with due diligence on behalf of the City, within two years of the receipt of the funds to the City, said funds, less the City's administration fee, shall be deemed unclaimed funds and shall be disposed of in accordance with ORS Chapter 98 and any changes thereto. Due diligence by the City is defined as a Department of Motor Vehicle search and a search with the County Clerk.

Section 12. Successor Interests. The right to recover the apportionment share shall be binding upon and inure to the benefit of the developer/applicant and binding all their heirs, successors, personal representatives, and assigns, provided however, that the burden is on the successor claiming an interest to provide all necessary legal documents to the City. Any cost incurred by the City for attorney's fees to insure that the claimant is a legal successor shall be deducted from the apportionment amount due to the claimant.

Section 13. Severability. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect validity of the remaining portions of this ordinance.

Section 14. Effective Date. This ordinance shall become effective thirty (30) days after passage by the bay City Council and approval by the Mayor.

PASSED and ADOPTED by the City Council this 8th day of February, 2000 and APPROVED by the Mayor this 8th day of February, 2000.

/s/ James A. Cole, Jr., Mayor
James A. Cole, Jr., Mayor

Attest:

/s/ Linda Dvorak
Linda Dvorak, City Recorder

Ayes: 5
Nays: 1
Abstentions: