

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 benefitted, 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 benefitted 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 benefitted within the district specified in the petition, may pass the requested motion. The petition referred to herein must be filed with the city manager 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 manager 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 benefitted 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 manager, 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 manager to give notice of such improvement by posting at the city hall and at two places within the benefitted 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 benefitted properties.

3.020 Hearing and Action on Improvement.

If, prior to or during the hearing, written 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 benefitted 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 manager 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 manager 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 manager to determine the proposed cost to each property benefitted 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 manager. 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 manager 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 manager, and after such consideration the council shall, by resolution levy, or amend and levy the proposed assessments presented by the city manager. 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 manager 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 benefitted;
- (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 benefitted property of the costs of the improvement.

3.045 Alternative Methods of Financing.

Nothing contained in sections 3.000 to 3.105 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 3.105.

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 manager 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 manager 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 con-

sideration by the city council of objections to the preliminary assessments, then the owner may file written objections alleging lack of jurisdiction with the city manager 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 manager 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 manager, who shall determine whether there has been an error in fact. If the city manager 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 manager 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 manager 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 3.105, 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 3.105.

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 3.105 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 "West Linn, 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 lienholder of a parcel of real property that was formed from the partition or other division of the larger tract of real property 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 manager 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.

3.105 Deferral of Special Assessments for Local Improvements.

Certain persons may be eligible for deferral of special assessments for local improvements pursuant to ORS 311.702 through 311.735. The City will use the provisions of ORS 311.702 through 311.735 to process any request for deferral of special assessments for local improvements.

[Section 3.105 added by Ordinance No. 1441 approved August 23, 1999.]

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 manager, 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.

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