

ORDINANCE NO. 112

AN ORDINANCE PRESCRIBING THE METHODS AND PROCEDURES FOR MAKING PUBLIC IMPROVEMENTS IN THE CITY OF LAKESIDE; FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS THEREFORE AND FOR THE CREATION AND ENFORCEMENT OF LIENS.

The city of Lakeside ordains as follows:

Section 1. Definition of Terms.

(a) The term improvement shall include the definition of "local improvement" contained in ORS 223.387, and it shall also include any work, construction or demolition designated by ordinance of the city of Lakeside.

(b) The term owner shall have the meaning given such term in section 38, chapter IX of the Lakeside Charter of 1976.

Section 2. Initiation of Proceedings and Report from the City

Engineer. Public improvements may be initiated by motion of the council which shall direct the city engineer to make a written report for such project and file the same with the city recorder. Unless the council shall direct otherwise, such report shall contain the following items:

(a) A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof.

(b) An estimate of the probable cost of the improvement, including any legal, administrative, and engineering costs attributable thereto.

(c) An estimate of the unit cost of the improvement to the specially benefitted properties.

(d) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefitted.

(e) 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 owners thereof.

(f) A statement of outstanding assessments against property to be assessed.

Section 3. Council's Action on the City Engineer's Report. After the city engineer's report shall have been filed with the city recorder, the council may thereafter by motion:

(a) Approve the report;

(b) Modify the report and approve it as modified;

(c) Require the city engineer to supply additional or different information for such improvement; or

(d) Abandon the improvement.

Section 4. Resolution and Notice of Hearing. After the council shall have approved the city 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 recorder to give notice of such improvement by two publications one week apart in a newspaper of general circulation within the city of Lakeside and by mailing copies of such notice to the owners to be assessed for the costs of such improvement, which said notice shall contain the following items:

(a) A statement that the report of the city engineer is on file in the office of the city recorder and is subject to public examination and that said report is by reference thereto made a part of the notice.

(b) A statement that the council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than ten days following the first publication of notice, at which objections and remonstrances to such improvement will be heard by the council; and if prior to 5:00 p.m. on the date of such hearing there shall be presented to the recorder valid written remonstrances by the owners of two-thirds of the area within the boundaries of the district, then the improvement will be abandoned for at least six months.

(c) A description of the real property to be specially benefitted by the improvement.

(d) The names of the owners of such property.

(e) The estimate of the unit cost of the improvement to the property specially benefitted by a statement of such cost set opposite the name of the owner thereof.

(f) The total estimated cost of the improvement to be paid by special assessments to benefitted properties.

Section 5. Manner of Doing Work. The council may provide in the improvement resolution that the construction work may be done in whole, or in part, by a private contractor, by the city of Lakeside, by any other governmental agency, or by any combination thereof.

Section 6. Hearing. At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of said hearing or written remonstrances and oral objections, if any, the council may, by motion, at the time of said hearing or within 60 days thereafter, order said improvement to be carried out in accordance with the resolution, or the council may, on its own motion, abandon the improvement.

Section 7. Call for Bids. The council may, in its discretion, direct the city recorder to advertise for bids for construction of all, or any part, of the improvement project on the basis of the council-approved city engineer's report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after said public hearing. However, no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement. In the event that any part of the work of the improvement is to be done under contract bids, then the council shall determine the time and matter of advertisement for bids, and the contracts shall be let to the lowest responsible bidder, provided that the council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The city shall require 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 of Lakeside.

If the council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is substantially in excess of the city engineer's estimate, it may, in its discretion, provide for holding a special hearing of objections to the proceeding with the improvement on the basis of such bid, and it may direct the city recorder to publish one notice thereof in a newspaper of general circulation in the city of Lakeside.

Section 8. Method of Assessment and Alternative Methods of Financing. The council in adopting a method of assessment of the costs of the improvement may:

(a) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived.

(b) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefitted.

(c) 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.

(d) Use general obligation improvement warrants or other available means for interim financing of the improvement.

Nothing contained in this ordinance shall preclude the council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or other federal, state or city revenues. 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.

Section 9. Assessments Prior to Construction. If the council has elected to levy assessments on the benefitted property prior to construction, then the council shall hear and consider the manner and method of assessment, and any objections thereto, at the initial hearing on the project; and, after determining the amount of the assessment to be charged against each parcel of property within the improvement district according to the special and peculiar benefits accruing thereto, it may levy the assessments by ordinance, subject to provisions for deficit assessments or rebates following the completion of construction and determination of actual costs.

Section 10. Notice and Levy of Assessments. If assessment of benefitted property has not been made on the basis of estimates of the city engineer, then when actual costs have been determined, the city recorder shall give notice of the proposed assessments by publication in a newspaper of general circulation in the city of Lakeside and by mail or delivery to the owners of property to be assessed at least ten days prior to the date that the proposed assessments are to be considered by the city council. The notice shall contain a description of the property to be assessed, the amount of the proposed assessment for each parcel of such property, and the latest date that objections may be filed with the city recorder, which date shall not be earlier than the tenth day after the date of publication and mailing, and that such objections must be in writing and state the grounds therefor. The notice shall also state that the council will enact an assessment ordinance following the consideration of the proposed assessments and any objections thereto; and, if the owner of property assessed shall fail, within thirty days of the enactment of the said ordinance, to either apply to pay such assessment in installments or to pay the assessment in full, then interest shall commence to run on the assessment and the property will be subject to foreclosure. The council shall consider the proposed assessments, and any objections thereto, and may adopt, correct, modify or revise the proposed assessments and determine the amount of assessment to be charged against each parcel of property within the improvement district according to the special and peculiar benefits accruing thereto from the improvement and shall levy the assessments by ordinance.

Section 11. Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the city recorder, who shall determine whether there has been an error in fact. If the recorder shall find that there has been an error in fact, he shall recommend to the council an amendment to the assessment ordinance to correct such error, and upon enactment of such amendment, the city recorder shall make the necessary correction in the docket of city liens and send a corrected notice of assessment by registered or certified mail.

Section 12. Deficit Assessment. In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that 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 recorder to publish one notice thereof in a newspaper of general circulation in the city of Lakeside and mail copies of such notice to the owners of property to be assessed for the costs of the improvement. After such hearing, the council shall make a just and equitable deficit assessment by ordinance which shall be entered in the docket of city liens as provided by this ordinance, and notices of the deficit assessment shall be published and mailed and the collection of the assessment shall be made in accordance with section 10 of this ordinance.

Section 13. Rebates. If, upon the completion of the improvement project, it is found that 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 ordinance, and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that 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.

Section 14. Lien Records and Foreclosure Proceedings. After passage of the assessment ordinance by the council, the city recorder 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 ordinance. Upon such 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 has been assessed for such improvement. All assessment liens of the city of Lakeside 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 10 percent per annum until paid on all amounts not paid within 30 days from the date of such assessment ordinance 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.

Section 15. Abandonment of Proceedings. The council shall have full power and authority to abandon and rescind proceedings for improvements made under this ordinance 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 persons paying the same, their assigns or legal representatives.

Section 16. Curative Provisions. No improvement assessment shall be rendered invalid by reason of a failure of the city engineers' report to contain all of the information required by section 2 of this ordinance, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, 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 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 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.

Section 17. Remedies. Subject to the curative provisions of section 16, and the rights of the city to reassess as provided in section 18 of this ordinance, 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 recorder prior to the public hearing, 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 written objections. A property owner, who has filed written objections with the city recorder prior to the public hearing, 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 shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the city recorder within 30 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 limitation. 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.

Section 18. Reassessment. Whenever 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 shall be 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 of Oregon.

Section 19. Reapportionment of Assessments. Property in single ownership at the time of the initial hearing at which the city acquires jurisdiction to perform a public improvement need not be divided by the city for the purpose of levying assessments except when the city receives actual notice of the division of ownership of such property prior to the enactment of the assessment ordinance. After an assessment has been levied upon contiguous property in single ownership as provided in this ordinance, there shall be no division or reapportionment of the assessment lien except under the following procedure:

(a) The owner of all or any portion of a parcel of contiguous land subject to a single assessment may make application to the city recorder for a division and reapportionment of the assessment; and such application shall contain a legal description of each parcel of land into which the property is proposed to be divided together with the name and address of each of the owners and other parties having an interest in such property.

(b) After the receipt of the application, the city recorder shall mail notice to each owner and party having an interest in such property of the application and the date and time of the meeting of the city council at which the matter shall be considered, which meeting shall not be earlier than ten days from the mailing of written notice.

(c) At or prior to the meeting of the city council at which the application will be considered the city administrator shall make a report and recommendation to the council for the apportioning of the assessment lien between portions of the property to be divided and describing the effect of such division upon the security of the city.

(d) At the designated meeting of the city council the applicant and any owner or party having an interest in such property may be heard and the council may make a decision at such meeting or the council may defer its decision to a meeting to be held within 45 days.

(e) The council shall make no reapportionment of an assessment which will impair the security of the city of Lakeside for the collection of the assessments upon the property, and the council may impose conditions upon such reapportionment for the protection of the city.

(f) A reapportionment of assessments shall become effective only after the enactment of an ordinance declaring such reapportionment and providing for the amendment of the docket of city liens to conform with the ordinance.

Passed by the council and approved by the mayor October 16, 1986.