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ORDINANCE NO. 4088

TITLE: An Ordinance amending Chapter 15.10 of the Albany Municipal Code covering bonding of special assessments for public improvements to properties directing adoption of the deferral of bonding special assessments as provided for by ORS 311.702 through 311.735.

WHEREAS the 1977 Oregon State Legislature adopted the House Bill No. 2041 being Chapter 859 of the 1977 Oregon Legislative assembly and therein provided for a special program relating to special assessments, including but not limited to a Homestead Deferral program for the elderly and appropriating money therefore; and

WHEREAS the aforementioned enactment is a procedure providing for the deferral of assessments which was formerly done under Chapter 15.10 of the Albany Municipal Code and a continuation of the program under Chapter 15.10 would be a duplication of effort and therefore the provision of the Albany Municipal Code should be repealed and all applications for deferral should be made under State statute, and

WHEREAS there are certain outstanding senior citizens deferrals that have been given under Chapter 15.10 of the Albany Municipal Code and these should be continued in force and affect, now therefore

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

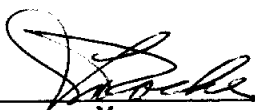
Section 1: Chapter 15.10 of the Albany Municipal Code is hereby repealed.

Section 2: That all assessments that have been deferred under the provision of Chapter 15.10 are hereby continued in full force and affect and for the purposes of those assessments which are still unpaid and for which deferral has been given under Chapter 15.10 of the Albany Municipal Code shall continue and for the purpose of outstanding assessments which have been deferred, it shall be considered that Chapter 15.10 is in full force and affect for said assessments.

Approved by the Mayor: January 11, 1978

Passed by the Council: January 11, 1978

Effective Date: February 10, 1978



Mayor

ATTEST:



City Recorder

Ord
4088

A-Engrossed
House Bill 2041

Ordered by the House June 2
(Including Amendments by House June 2)

By order of the Speaker (at the request of the Interim Committee on
Intergovernmental Affairs)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Permits persons over 62 years of age to elect to defer payment of amounts owed following special assessment levied against their homesteads to defray costs of sewer line, water main, sidewalk, street, or other improvement. Authorizes deferral until property is no longer homestead of person or elderly surviving spouse. Requires special assessment to be type payable by instalment. Establishes procedures for deferral, collection, and payment of special assessment. Requires *[State Treasurer]* **Department of Revenue**, upon eligible person's election, to pay to local government unit deferred instalment and interest amounts out of excess funds. Requires local government unit to reimburse *[State Treasurer]* department upon collection of special assessment deferral. Permits *[State Treasurer]* department to make rules. **Requires officer in charge of bond lien docket to send notice to each individual claiming deferral of special assessment for local improvements informing individual that they must file claim for deferral not later than November 15 of year they claim deferral.**

[Declares emergency. Effective July 1, 1977.]

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1
2 Relating to special assessments, including but not limited to a homestead deferral
3 program for the elderly; and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** As used in sections 1 to 14 of this Act, unless the context otherwise
6 requires:

7 (1) "Department" means the Department of Revenue.

8 (2) "Homestead" means the principal dwelling, either real or personal property,
9 owned or being purchased by the individual claiming the deferral under sections 1 to 14
10 of this Act and the contiguous land area upon which it is located.

11 (3) "Special assessment for local improvement" means an amount specially assessed
12 or reassessed to the homestead to defray the cost of an improvement of the nature
13 described in ORS 223.387 and assessed or reassessed on the basis of benefit. "Special
14 assessment" includes only those assessments made that are bonded at the time the
15 application for deferral is made under ORS 223.205 to 223.295 (Bancroft Bonding Act)
16 or other law that provides for bonding improvement assessments and selling bonds.

17 (4) "Special assessment improvement amounts" or "amount of special assessment
18 for local improvement" means the unpaid instalments of the special assessment due
19 and payable during the calendar year for which application for deferral is made, plus
20 interest attributable to the instalments. If the amount of special assessment for local
21 improvement or any instalment thereof has become delinquent at the time of initial
22 application for deferral, the terms include any delinquent instalments and interest,
23 penalties or costs imposed as a result of the delinquency, which amounts shall be
24 considered payable in the calendar year for which claim for deferral is made.

25 **SECTION 2.** (1) Subject to section 3 of this Act, an individual may elect to defer
26 payment of the amount of special assessment for local improvement assessed or
27 reassessed to his homestead due and payable during the calendar year for which the
28 election is made. The election shall be made by filing a claim for deferral with the
29 officer in charge of the bond lien docket. The effect of filing the claim shall be to defer
30 payment of the amount of special assessment for local improvement determined under
31 section 1 of this Act.

32 (2) Subject to section 12 of this Act, when the individual exercises his election to
33 claim the deferral under subsection (1) of this section, it shall have the effect of
34 deferring payment of the amount of special assessment for local improvement deferred

1 pursuant to the claim until the special assessment for local improvement becomes
2 delinquent under section 7 of this Act.

3 (3) If a guardian or conservator has been appointed for an individual otherwise
4 qualified to obtain the deferral of payment of special assessment for local improvement
5 amounts accorded under sections 1 to 14 of this Act, the guardian or conservator may
6 act for such individual in complying with sections 1 to 14 of this Act.

7 (4) An individual who has elected to claim the deferral under sections 1 to 14 of this
8 Act shall not be entitled to claim a deferral or other similar assistance available under
9 local law.

10 **SECTION 3.** In order to qualify for deferral of payment of special assessment for
11 local improvement amounts under sections 1 to 14 of this Act, the individual filing the
12 claim for deferral and the homestead with respect to which the claim is filed must meet
13 the following requirements at the time the claim for deferral is filed and thereafter so
14 long as payment of the amount of special assessment for local improvement is deferred:

15 (1) The individual filing the claim for deferral must be 62 years of age or older.

16 (2) The individual filing the claim, by himself or together with his spouse, must
17 own the fee simple estate or be purchasing the fee simple estate under a recorded
18 instrument of sale.

19 (3) The property with respect to which the claim is filed must be the homestead of
20 the individual who files the claim for deferral.

21 (4) If the individual is delinquent in payment of the special assessment for local
22 improvement or any instalments thereof, the homestead must not have yet been sold at
23 foreclosure sale.

24 **SECTION 4.** A claim for deferral under section 2 of this Act shall be in writing on
25 a form prescribed by the department and shall recite the facts establishing eligibility
26 for the deferral. The initial claim shall incorporate the terms or have annexed thereto a
27 certified copy of the agreement for payment of the special assessment for local
28 improvement in instalments. The initial claim may be filed at any time during the
29 calendar year for which the deferral is first claimed. A claim for a subsequent year
30 shall be filed on or before December 15 of the year preceding the year for which the
31 claim is filed. The claim shall be verified.

32 **SECTION 5.** (1) If eligibility for special assessment deferral is established as
33 provided in sections 1 to 14 of this Act, the officer in charge of the bond lien docket
34 shall:

1 (a) Show by an entry on the bond lien docket which property specially assessed is
2 accorded deferral under sections 1 to 14 of this Act.

3 (b) Send to the department a copy of the claim for deferral described in section 4 of
4 this Act and shall verify to the department the amounts of special assessment for local
5 improvement subject to deferral for the calendar year, the rates of interest and accrual
6 dates and any other pertinent information relating to payment of the deferred amounts.

7 (2) Until otherwise required by sections 1 to 14 of this Act, the officer in charge of
8 the bond lien docket shall continue to show on the bond lien docket that the property
9 with respect to which the deferral under sections 1 to 14 of this Act is allowed continues
10 to be subject to special assessment deferral. The officer in charge of the bond lien
11 docket shall make a separate list of the properties subject to special assessment deferral
12 and shall show the amount of special assessment for local improvement deferred for
13 each property, and shall show the accrued interest added each year on the amount of
14 special assessment for local improvement deferred and the total accrued interest.

15 (3) The deferred special assessment amounts, and accrued interest, shall continue to
16 be a lien against the property in the same manner as any other unpaid special
17 assessments, but shall not be subject to the procedures provided for collection of
18 delinquent special assessments except as provided in sections 1 to 14 of this Act.

19 (4) Interest shall accrue on the amount of the deferred special assessment for local
20 improvement at the rate of six percent per annum. Except the interest described in this
21 subsection and the interest included in the deferred special assessment amounts, no
22 other interest shall accrue on the amount of deferred special assessment for local
23 improvement.

24 **SECTION 5a.** (1) On or before September 1 of each year, the officer in charge of
25 the bond lien docket shall send a notice to each individual who has claimed deferral of
26 special assessment for local improvement amounts for the current year. The officer
27 shall give notice by an unsealed postcard or other form of mail sent to the residence
28 address of the individual as shown in the claim for deferral filed for the current year.
29 The notice shall be substantially in the following form:

30

31 _____
To: (Name of individual)

32 If you want to defer the collection of special assessment instalments and interest on
33 your homestead for the calendar year beginning on January 1, _____, you must file a
34 claim for deferral not later than November 15, _____, with the officer in charge of the
35 bond lien docket.

1 If you fail to file your claim for deferral on or before November 15, _____, you
 2 will have to pay special assessment instalments and interest on your homestead
 3 payable during the calendar year beginning January 1, _____.

4 _____
 5 (2) If an individual who has claimed deferral of special assessment for local
 6 improvement for the current year does not file a claim for deferral on or before
 7 November 15, the officer in charge of the bond lien docket shall send, not later than
 8 December 1, a notice to the individual by registered mail to the residence address of the
 9 individual as shown on the claim for deferral filed for the current year. The notice shall
 10 be in substantially the following form:

11 _____
 12 To: (Name of individual)

13 You did not file a claim for deferral of special assessment instalments and interest
 14 for your homestead for the calendar year beginning January 1, _____. Consequently,
 15 you will have to pay the special assessment instalments and interest payable during the
 16 calendar year beginning January 1, _____.

17 If you wish to defer collection of the special assessment instalments and interest for
 18 the calendar year beginning January 1, _____, on your homestead, you must file a
 19 claim for deferral with the officer in charge of the bond lien docket not later than
 20 December 15, _____, (insert the current year) and pay a penalty of \$5.

21 _____
 22 (3) If the individual files a claim for deferral after November 15 and on or before
 23 December 15 and pays a penalty of \$5, the homestead with respect to which the deferral
 24 is claimed shall be subject to deferral for the calendar year next beginning. The \$5
 25 penalty shall be receipted and accounted for in the records of the appropriate local
 26 office and shall be paid into the general fund of the local government unit.

27 (4) Failure to receive the notices provided for in this section is not a defense in any
 28 proceeding for the collection of the special assessment for local improvement. The
 29 officer in charge of the bond lien docket and other local government officers are not
 30 personally liable for failure to give the notices.

31 **SECTION 6.** Subject to section 8 of this Act, all deferred special assessments for
 32 local improvement, including accrued interest, become payable as provided in section 7
 33 of this Act when:

34 (1) The individual who claimed deferral of collection of special assessment for local
 35 improvement on his homestead dies.

1 (2) The homestead with respect to which deferral of collection of special assessment
2 for local improvement is claimed is sold, or a contract to sell is entered into, or some
3 person other than the individual who claimed the deferral becomes the owner of the
4 property.

5 (3) The homestead with respect to which deferral of special assessment for local
6 improvement is claimed is no longer the homestead of the individual who claimed the
7 deferral, except in the case of an individual required to be absent from the homestead
8 by reason of health.

9 **SECTION 7.** (1) When any of the circumstances listed in section 6 of this Act
10 occurs, the amounts of deferred special assessment for local improvement, including
11 accrued interest, shall be due and payable on August 15 of the year following the
12 calendar year in which the circumstance occurs, except as provided in section 8 of this
13 Act.

14 (2) If the amounts falling due as provided in this section are not paid on the
15 indicated due date, the amounts shall be deemed delinquent as of that date and the
16 homestead shall become the subject of the appropriate collection proceeding.

17 **SECTION 8.** (1) Notwithstanding sections 6 and 7 of this Act, when one of the
18 circumstances listed in section 6 of this Act occurs, the spouse of the individual who
19 claimed the deferral may elect to continue the homestead in its deferred status if:

20 (a) The spouse of the individual is or will be 60 years of age or older not later than
21 six months from the day the circumstances listed in section 6 of this Act occur; and

22 (b) The homestead is the homestead of the spouse of the individual and meets the
23 requirements of subsection (2) of section 3 of this Act.

24 (2) The election under subsection (1) of this section to continue the property in its
25 deferred status by the spouse shall be filed in the same manner as a claim for deferral
26 is filed under section 2 of this Act, not later than August 15 of the year following the
27 calendar year in which the circumstances listed in section 6 of this Act occur.
28 Thereupon, the homestead with respect to which the deferral is claimed shall continue
29 to be subject to special assessment deferral and the appropriate local officials shall
30 cancel all actions taken under section 7 of this Act and make any necessary correcting
31 entries in their records. Subject to section 12 of this Act, the deferral shall continue
32 until the special assessment for local improvement becomes delinquent under section 7
33 of this Act.

1 **SECTION 9.** (1) Subject to subsection (2) of this section, all or part of the amounts
2 of deferred special assessment for local improvement, and accrued interest, may at any
3 time be paid to the appropriate local officer by:

4 (a) The individual who filed the claim for deferral or his spouse.

5 (b) The next of kin of the individual who filed the claim for deferral, his heir at law,
6 his child or any person having or claiming a legal or equitable interest in the property.

7 (2) A person referred to in paragraph (b) of subsection (1) of this section may make
8 the payments only if no objection is made by the individual who filed the claim for
9 deferral within 30 days after the local officer deposits in the mail notice to the
10 individual who filed the claim that the payment has been tendered.

11 (3) Any payments made under this section shall be applied first against accrued
12 interest and any remainder against the deferred special assessment for local
13 improvement. A payment made pursuant to this section does not affect the deferred
14 status of the homestead. Unless otherwise provided by law, the payment does not give
15 the person paying the deferred special assessment any interest in the property or any
16 claim against the estate, in the absence of a valid agreement to the contrary.

17 **SECTION 10.** (1) When any deferred special assessment for local improvement,
18 including accrued interest, is collected, the moneys shall be credited to a special account
19 and the appropriate entries shall be made evidencing payment on the bond lien docket.
20 The appropriate local officer shall remit the amount of deferred special assessment, and
21 accrued interest, to the department. The remittance shall be accompanied by an
22 explanation giving a description of the homestead for which the special assessment for
23 local improvement was collected, and a statement of the special assessment amounts
24 and the accrued interest amounts collected.

25 (2) The department shall enter the amount received against the accounts which
26 have been set up for the special assessment deferred properties and shall redeposit the
27 amount received in the General Fund.

28 **SECTION 11.** (1) At the time that a homestead that is the subject of special
29 assessment deferral is deeded to a unit of local government at the close of collection
30 proceedings, the appropriate officer of the local government unit shall pay to the
31 department out of the general fund of the local government unit the amount of deferred
32 special assessment, and accrued interest, which was not collected in the same manner
33 as other deferred special assessments for local improvement are paid over to the
34 department when collected.

1 (2) Any amount paid over to the department under subsection (1) of this section, if
2 later collected, shall be paid to reimburse the general fund of the local government unit
3 and the necessary entries shall be made upon the special assessment records.

4 **SECTION 12.** Nothing in sections 1 to 14 of this Act is intended to or shall be
5 construed to:

6 (1) Prevent the collection, by foreclosure, of delinquent property taxes which have
7 become a lien against the homestead that is the subject of special assessment deferral
8 provided in sections 1 to 14 of this Act.

9 (2) Prevent the granting of deferral of property taxes pursuant to ORS 311.666 to
10 311.696.

11 (3) Affect any provision of a mortgage or other instrument relating to the
12 homestead.

13 (4) Prevent the collection, by appropriate collection proceeding, of delinquent
14 special assessment instalments which are a lien against the homestead but which have
15 not been deferred as provided in sections 1 to 14 of this Act. Upon determination by the
16 local government unit that any nondeferred instalment is in default, the whole sum,
17 including deferred amounts of the special assessment for local improvement shall
18 become due and payable at once.

19 **SECTION 13.** (1) Upon receipt from the department of the information needed to
20 make payments of the deferred special assessment amounts, the State Treasurer shall
21 pay to the appropriate local officer at the appropriate times the amounts contained in
22 the information.

23 (2) The department shall maintain accounts for each specially assessed deferred
24 property and shall accrue interest on the gross amount of special assessment for local
25 improvement advanced.

26 (3) The funds provided for the payments made pursuant to subsection (1) of this
27 section shall be made available from the excess funds in the hands of the State
28 Treasurer described in paragraph (s) of subsection (2) of ORS 293.701 and shall
29 constitute investment funds.

30 **SECTION 14.** The department shall may make any rules necessary to carry out the
31 provisions of sections 1 to 14 of this Act.