

ORDINANCE NO. 4652

AN ORDINANCE PROVIDING PROCEDURES FOR LOCAL IMPROVEMENTS AND SPECIAL ASSESSMENTS BY AMENDING ALBANY MUNICIPAL CODE CHAPTER 15.04, PROCEDURE FOR PUBLIC IMPROVEMENTS, AND REPEALING ALBANY MUNICIPAL CODE CHAPTER 15.08, ASSESSMENTS.

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

Section 1: Albany Municipal Code Chapter 15.04 is hereby amended to read as follows:

Chapter 15.04

PROCEDURES FOR LOCAL IMPROVEMENTS AND SPECIAL ASSESSMENTS

Sections:

- 15.04.010 Initiating improvements.
- 15.04.020 Engineer's report.
- 15.04.030 Financial investigation report.
- 15.04.040 Action on engineer's report and financial investigation report.
- 15.04.050 Emergencies.
- 15.04.060 Resolution and notice of hearing.
- 15.04.070 Manner of doing work.
- 15.04.080 Hearing.
- 15.04.090 Call for bids.
- 15.04.100 Assessment method and alternative methods of financing.
- 15.04.110 Assessment ordinance.
- 15.04.120 Notice of assessment.
- 15.04.130 Lien record and foreclosure proceedings.
- 15.04.140 Error in assessment calculation.
- 15.04.150 Supplemental assessments.
- 15.04.160 Rebates.
- 15.04.170 Remedies.
- 15.04.180 Abandonment of proceedings.
- 15.04.190 Curative provisions.
- 15.04.200 Reassessment.

15.04.010 Initiating improvements. (1) When the council considers it necessary to require that improvements to a street, sewer, water line, traffic signal, sidewalk, parking, curbing, drain, or other public improvement defined in ORS 223.387 be paid for in whole or in part by special assessment according to benefits conferred, the council shall declare by resolution that it intends to make the improvement and direct the city engineer to make a survey of the improvement and file a written report with the city recorder and in accordance with Section 15.04.030 direct the finance director to prepare a financial investigation report or

(2) When owners of 80% of the property that will benefit by improvements defined in Subsection (1) request by written petition that the council initiate an improvement, the council shall declare by resolution that it intends to make the improvement and direct the city engineer to make a survey of the improvement and file a written report with the city recorder and in

accordance with Section 15.04.030 direct the finance director to prepare a financial investigation report.

15.04.020 Engineer's report. Unless the council directs otherwise, the engineer's 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 assessed for payment of the cost.
- (2) An estimate of the probable cost of the improvement, including engineering, legal, and administrative costs.
- (3) An estimate of the unit cost of the improvement to the benefited properties per square foot, per front foot, or another unit of cost.
- (4) A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to benefited properties.
- (5) A description of each lot, parcel of land, or portion of land to be benefited with names of the record owners and, when readily available, names of contract purchasers as shown on books and records of the Linn or Benton County Tax Departments. To describe each lot or parcel of land under provisions of this section, it shall be sufficient to use the tax account number or the map and tax lot numbers assigned to the property by the tax department of Linn or Benton County.

15.04.030 Financial investigation report. Where Bancroft Bonding is proposed as a means of project financing, in whole or in part, and unless the council directs otherwise, the finance director will prepare a financial investigation report. The report will contain the following:

- (1) Assessed valuation of land;
- (2) Number of vacant lots or description of unused lands in area affected;
- (3) Number of similar lots held by the city through foreclosure;
- (4) Delinquency rate of assessments and taxes in the area;
- (5) Real estate value trends in the area;
- (6) Tax levy trends and potential financial impact on improvement district;
- (7) Conformance of the project to the City's Comprehensive Plan;
- (8) Attitude of property owners toward the project;
- (9) Status of municipal debt;
- (10) Cost of financing;
- (11) Creditworthiness of petitioners.

15.04.040 Action on engineer's report and financial investigation report. After the engineer's report and financial investigation report are filed with the city recorder, the council may by resolution approve the reports, modify the reports and approve them as modified, require the public works director or finance director to supply additional or different information for the improvement, or abandon the improvement.

15.04.050 Emergencies. In the event the council declares by unanimous vote that an emergency exists and that an improvement is essential to the welfare of the city, the procedure described in Sections 15.04.010 to 15.04.030 shall be followed, except that the council may then declare its intention to initiate the improvement at any time and the engineer's report shall be completed and construction work shall commence as soon as is reasonably possible.

15.04.060 Resolution and notice of hearing. After the council has approved the engineer's report and financial investigation report as submitted or as modified, the council shall declare by resolution that it intends to make the improvement. The city recorder shall forthwith give notice of the proposed improvement by posting the notice in the city hall and by sending a copy of the notice by certified mail, addressed to the last known address of the person currently assessed for the properties to be benefited as shown by the records of the Linn or Benton County Assessor, that a hearing will be held to hear objections, if any, to the proposed improvement.

The notice must be mailed and posted at least ten days prior to the hearing date.

The notice shall contain the following information and such other information that may be necessary to explain the improvement and the procedure:

- (1) A brief description of the project;
- (2) The intent to improve;
- (3) Estimated total cost and unit cost of the improvement;
- (4) Date, time, and place of the hearing;
- (5) Right to present objections or support to the project at the hearing.

15.04.070 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 the city, by contract, by another governmental agency, or by a combination thereof.

15.04.080 Hearing. If remonstrances are less than the amount required to suspend the proposed improvement, the council may by motion at the time of the hearing or within 120 days thereafter order the improvement carried out in accordance with the resolution.

15.04.090 Call for bids. The council may direct the public works director to prepare plans, specifications and then advertise for bids for construction of all or part of the improvement project. If part of the improvement work is to be done under contract bids, the council shall proceed in accordance with procedures of state law for public contracting.

15.04.100 Assessment method and alternative methods of financing.

(1) The council, in adopting a method of assessing the cost of the improvement, may:

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

(b) Use any just and reasonable method to apportion the sum to be assessed among the benefited properties.

(c) Authorize payment by the city of all or part of the cost of an improvement when in the opinion of the council the topographical or physical conditions, unusual or excessive public travel, or another character of the work warrants only partial payment or no payment of the cost by owners of benefited properties.

(2) If some lots in a subdivision are of questionable marketability, the city may require security from the owner prior to award of bids or project construction. Such security may be, but is not limited to, a bond or deposit of collateral.

(3) The Council may elect to provide Bancroft bonding to all or any part of the improvement project. The balance of the project not Bancrofted must be secured to the City in a form acceptable to the City finance director prior to award of bids or project construction.

(4) Nothing contained in this section shall preclude the council from using other means of financing improvements, including federal and state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or other legal means of financing. If other means of financing are used, the council may levy special assessments according to benefits derived to cover any remaining cost.

15.04.110 Assessment ordinance. (1) After the work is done and the cost has been actually determined, the Council shall decide whether the benefited property shall bear all or a portion of the cost. The city recorder or other persons designated by the council shall prepare the proposed assessment for each lot within the assessment district and file the assessments in the city recorder's office.

(2) Notice of the proposed assessment shall be mailed to the owner of each lot proposed to be assessed at the address shown on the Linn or Benton County Tax Assessor's roll. The notice shall state the amount of assessment proposed on the property and fix a date for a public hearing.

(3) At the hearing, the council shall:

(a) Consider objections and may adopt, correct, modify, or revise the assessment against each lot in the district according to special and peculiar benefits accruing to it from the improvement.

(b) By ordinance, allocate the assessment in the manner deemed by the Council to be most equitable.

15.04.120 Notice of assessment. (1) Within 10 days after the ordinance levying assessments has been passed, the city recorder shall send a notice of assessment to each owner of assessed property by registered or certified mail.

(2) The notice of assessment shall include the name of the property owner, a description of the assessed property, the amount of the assessment, and the effective date of the assessment ordinance, and shall state that interest will begin to run on the assessment and the property will be subject to foreclosure unless the owner either makes application within 10 days to pay the assessment in 20 equal installments or pays the assessment in full within 30 days after the effective date of the assessment ordinance.

15.04.130 Lien record and foreclosure proceedings. (1) After the assessment ordinance is adopted, the city recorder shall enter into the docket of liens a statement of the amount assessed on each lot, parcel of land or portion of land, a description of the improvement, names of property owners, and the effective date of the assessment ordinance. On entry into the lien docket the amounts shall become liens and charges on the lots, parcels of land or portions of land that have been assessed for improvement.

(2) Assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as state law permits.

(3) Thirty days after the date of the assessment ordinance, interest shall be charged at a rate to be determined by the council, and the city may foreclose or enforce collection of assessment liens in the manner provided by state law.

(4) Assessment liens that have been Bancrofted in accordance with Oregon Bancroft Bonding Act and become one year delinquent are subject to foreclosure and penalty and interest charges, as prescribed in Oregon Revised Statutes.

(5) The city may enter a bid on property being offered at a foreclosure sale. The city bid shall be prior to all bids except those made by persons who would be entitled under state law to redeem the property.

15.04.140 Error in assessment calculation. 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. If there has been an error, the recorder shall recommend to the council an amendment to the assessment ordinance to correct the error. On enactment of the amendment, the recorder shall make the necessary correction in the docket of liens and send a corrected notice of assessment by registered or certified mail.

15.04.150 Supplemental assessments. If an assessment is made before the total cost of the improvement is determined, and if the amount of the assessment is insufficient to defray expenses of the improvement, the council may declare the insufficiency by motion and prepare a proposed supplemental assessment. The council shall set a time for hearing objections to the supplemental assessment and direct the city recorder to provide notice as required in Section 15.04.060. After the hearing, the council shall make a just and equitable supplemental assessment by ordinance, which shall be entered in the docket of liens as provided by Section 15.04.130. Notice of the supplemental assessment shall be mailed, and collection of the assessment shall be made in accordance with Sections 15.04.130 and 15.04.150.

15.04.160 Rebates. On completion of the improvement project, if the assessment previously levied on any property is found to be more than sufficient to pay the cost of the improvement, the council shall determine the excess and declare it by ordinance. When declared, the excess amounts must be entered in the lien docket as a credit on the appropriate assessment. If an assessment has been paid, the person who paid or that person's legal representative shall be entitled to payment of the rebate credit.

15.04.170 Remedies. Subject to curative provisions of Section 15.04.190 and rights of the city to reassess as provided in Section 15.04.200, proceedings for writs of review and other appropriate equitable or legal relief may be filed as provided by state law.

15.04.180 Abandonment of proceedings. The council may abandon proceedings for improvements made under Sections 15.04.010 to 15.04.210 at any time before final completion of the improvements. If liens have been placed on property under this procedure, they shall be canceled, and payments made on assessments shall be refunded to the person who paid them or to that person's legal representative.

15.04.190 Curative provisions. (1) An improvement assessment shall not be rendered invalid by reason of:

(a) Failure of the engineer's report to contain all information required by Section 15.04.030.

(b) Failure to have all the required information in the improvement resolution, assessment ordinance, lien docket, or notices required to be published and mailed.

(c) Failure to list the name of or mail notice to an owner of property as required by this ordinance.

(d) Any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect on the person complaining.

(2) The council shall have authority to remedy and correct all matters by suitable action and proceedings.

15.04.200 Reassessment. When an assessment, supplemental assessment, or reassessment for an improvement made by the city has been set aside, annulled, declared, or rendered void, or its enforcement restrained by a court of this state or by a federal court having jurisdiction, or when the council doubts the validity of the assessment, supplemental assessment, reassessment, or any part of it, the council may make a reassessment in the manner provided by state law.

Section 2. Albany Municipal Code Chapter 15.08, Assessments, is hereby repeated.

Passed by the Council: October 10, 1984

Approved by the Mayor: October 11, 1984

Effective Date: November 9, 1984



Mayor

ATTEST:



City Recorder