

*Section 11
Amended
by 554*

ORDINANCE NO. 458

AN ORDINANCE PRESCRIBING THE METHODS AND PROCEDURES FOR MAKING PUBLIC IMPROVEMENTS IN THE CITY OF WILLAMINA; FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS THEREFOR; FOR THE CREATION AND ENFORCEMENT OF ASSESSMENT LIENS; AND REPEALING ORDINANCE NO. 313.

The city of Willamina, Oregon, ordains as follows:

Section 1. Initiation of Proceedings and Report on Proposed Project. Whenever the council deems it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvement, to make any street, sewer, sidewalk, drain or other public improvement to be paid for in whole or in part by special assessment according to benefits, then the council shall by motion direct an appropriate city employe or agent to make a survey and written report for such project and file the same with the city recorder. Unless the council directs otherwise, such report shall contain the following matters:

(1) 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.

(2) Plans, specifications and estimates of the work to be done; provided, however, that when the proposed project is to be carried out in cooperation with any other governmental agency the report may adopt the plans, specifications and estimates of such agency.

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

(4) An estimate of the unit cost of the improvement to the specially benefited properties.

(5) 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 benefited.

(6) The description and assessed value of each lot, parcel of land or portion thereof to be specially benefited by the improvement with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof.

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

Section 2. Council Action on Report. After the report has been filed with the city recorder, the council may by motion approve the report; modify the report and approve it as modified; require additional or different information for such improvement; or it may abandon the improvement.

Section 3. Resolution and Notice of Hearing. After the council has approved the 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 direct the recorder to give notice of such improvement by two publications one week apart in a newspaper of general circulation within the city of Willamina and by mailing copies of such notice by registered or certified mail to the owners of property to be assessed for the costs of such improvement, which notice shall contain the following:

(1) That a written report on the improvement is on file in the office of the recorder and is subject to public examination.

(2) That the council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than 10 days following the first publication of notice, at which objections and remonstrances to such improvement will be heard by the council; and that if prior to such hearing there shall be presented to the recorder valid written remonstrances on forms provided by the city of the owners of two-thirds of property to be specially affected by such improvement, then the improvement will be abandoned for at least six months.

(3) A description of the property to be specially benefited by the improvement, the owners of such property and the estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties.

Section 4. 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 of Willamina, by a contract, by any other governmental agency, or by any combination thereof.

Section 5. Hearing. At the time of the public hearing on the proposed improvement, if the written remonstrances represent less than the amount of property required to defeat the proposed improvement, then, on the basis of said hearing of 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 6. 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 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; provided, however, that 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 improvement work is to be done under contract bids, the procedures contained in ORS 279.011 to 279.053 or an ordinance adopted pursuant thereto shall apply.

Section 7. Assessment Ordinance. If the council determines that the local improvement shall be made, when the estimated cost thereof is ascertained on the basis of the contract award or city departmental cost, or after the work is done and the cost thereof has been actually determined, the council shall determine whether the property benefited shall bear all or a portion of the cost. The recorder or other person designated by the council shall prepare the proposed assessment to the respective lots within the assessment district and file it in the appropriate city office. 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 recorder. Any such objection shall state the grounds thereof. The council shall consider such objections and may adopt, correct, modify or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments.

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:

(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 benefited.

(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 benefited property of the costs 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 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.

Section 9. Remedies. Subject to the curative provisions of Section 16 and the rights of the city to reassess as provided in Section 17 of this ordinance, proceedings for writs of review and suits in equity may be filed no later than 60 days after the passage by the council of the ordinance spreading the assessment; providing that the property owner has filed a written objection to the proposed assessment as provided in Section 7. A property owner who has filed a written objection with the city recorder, as required by Section 7, shall have the right to apply for a writ of review based on the grounds that the council, in the exercise of judicial functions, has exercised such functions erroneously or arbitrarily, or has exceeded its jurisdiction, to the injury of some substantial right of such owner, if the facts supporting said ground have been specifically set forth in the written objection as required in Section 7. A property owner who has filed a written objection with the city recorder, as required by Section 7, may commence a suit for equitable relief based on 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 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 or equitable defense, including laches. 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 10. Notice of Assessment. Within 10 days after the ordinance levying assessment has been passed, the city recorder shall send by registered or certified mail a notice of assessment to the owner of the assessed property and shall publish notice of such assessment twice in a newspaper of general circulation in the city of Willamina, the first publication of which shall be made not later than 10 days after the date of the assessment ordinance. The notice of assessment shall recite the date of the assessment ordinance and shall state that, upon the failure of the owner of the property assessed to make application to pay the assessment in installments within 10 days from the date of the first publication of notice, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure; and said notice shall further set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment.

Section 11. 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 have been assessed for such improvement. All assessment liens of the city of

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Willamina 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 same rate as the project cost rate per annum until paid on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 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 12. 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 finds 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 correct notice of assessment by registered or certified mail.

Section 13. Deficit Assessment. In the event that an assessment is 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 give notice according to the provisions in Section 3. 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 Sections 10 and 11 of this ordinance.

Section 14. 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; 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 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 person paying the same, his assigns or legal representatives.

Section 16. Curative Provisions. No improvement assessment shall be rendered invalid by reason of a failure of the report to contain all of the information required by Section 1 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. 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 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 of Oregon.

Section 18. Severability. The provisions of this ordinance are severable. If any section, sentence, clause or phrase of this ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this ordinance.

Section 19. Repeal. Ordinance No. 313, enacted October 13, 1965, is repealed.

Passed by the council August 31, 1978, and approved by the mayor September 1, 1978.