

Chapter 2.01
LOCAL IMPROVEMENT DISTRICTS

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2.01.010 Initiating Improvements and Engineer's Report.

- (1) Whenever the City Council shall deem it necessary to make any street, sewer, water, sidewalk, parking, curbing, drain or any other public improvement defined in ORS 223.387 to be paid for in whole or in part by special assessment according to benefits conferred, then the Council shall, by resolution, declare its intention to make said improvement or improvements and direct the City Engineer to make a survey and written report for such improvement and file the same with the City Recorder.
- (2) Whenever the owners of 60 percent of the property to be benefitted by any of the improvements defined in subsection (1) above shall by written petition request the Council to declare by resolution its intention to initiate such improvement or improvements, then the Council shall, by resolution, declare its intention to make said improvement or improvements and direct the City Engineer to make a survey and written report for such improvement and file the same with the City Recorder. Any such petition filed by said property owner shall be accompanied by a deposit in an amount determined by the City Engineer to be a reasonable estimate of the cost to prepare and file the survey and written report required by subsection (1) above in addition to 15 percent of the cost thereof to cover the City's general administrative and overhead costs. The deposit shall be an estimate only and upon determination of the actual cost of the expenses described above, any excess of the cost over the amount estimated and deposited will be paid by the petitioners. If the actual cost is

less than the amount deposited, the excess deposit shall be refunded, without interest, to the petitioners. [Amended by Ord. 193, September, 1990.]

- (3) Unless the Council shall direct otherwise, the engineer's report referred to in (1) and (2) above shall contain the following matters:
- (a) A map or plot 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) Preliminary design and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the engineer may rely on the design and estimates of such agency or agencies.
 - (c) An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto.
 - (d) An estimate of the unit cost (per square foot, per front foot, or whatever unit of cost is to be used) of the improvement to the specially benefitted properties.
 - (e) 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.
 - (f) The description of each lot, parcel of land or portion thereof to be specially benefitted, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof, as shown on the books and records of the Washington County Department of Revenue and Taxation. For purposes of describing each lot or parcel of land under the provisions of this section, it shall be sufficient to use the tax account number assigned to said property and used by said Department of Revenue and Taxation or the book and page designation as shown on the books and records of the Washington County Recorder.
 - (g) A statement of outstanding City of North Plains assessments, if any, against the property to be assessed.
 - (h) A recommendation regarding the rate of interest to be paid on assessments bonded under the Bancroft Bonding Act and ORS chapter 223.

2.01.020 Council's Action on Engineer's Report.

After the City Engineer's report shall have been filed with the City Recorder, 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 if the project was initiated by the Council's motion and not the petition of property owners as provided in section 2.01.010(2), herein.

2.01.030 Resolution and Notice of Hearing.

After the Council has approved the engineer's report as submitted or modified, the Council shall, by resolution, direct the City Recorder to give notice of the Council's intention to make such improvement by two publications (one week apart) in a newspaper of general circulation within the City, which notice shall contain the following matters:

- (1) That the report of the City Engineer 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 less 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 are presented to the recorder valid, written remonstrances by the owners of two-thirds of the property to be specially assessed for the improvements, then the improvement shall be suspended for six months.
- (3) A description of the property to be specially benefitted by the improvement, the owners of such property as shown on the books and records of the Washington County Department of Revenue and Taxation, and the engineer's estimate of the total cost of the improvement to be paid for by special assessments to benefitted properties. For the purpose of this subsection, it shall be sufficient to describe the property to be specially benefitted by tax account number assigned to the property and used by the Department of Revenue and Taxation or the book and page designation as shown on the books and records of the Washington County Recorder. [Amended by Ord. 124, November 16, 1981.]

2.01.040 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 North Plains, by a contract, or by any other governmental agency, or by any combination thereof.

2.01.050 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 the hearing of written remonstrances and oral objections, if any, the Council may, by motion, at the time of the hearing or within 60 days thereafter, order the engineer to prepare the necessary plans and specifications for construction of the improvement and require that the improvement be carried out in accordance with the resolution; or the Council may, if the project was initiated by the Council's motion and not the petition of property owners, abandon the improvement on its own motion; provided, however, that an improvement unanimously declared by the Council to be needed at once because of an emergency may be ordered by the Council, by resolution, to be constructed over and notwithstanding the written remonstrances which would otherwise defeat the project under the provisions of this chapter. [Amended by Ord. 124, November 16, 1981.]

2.01.060 Call for Bids.

- (1) 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. 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 manner 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 for any reason. 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 of North Plains.
- (2) If the Council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is substantially in excess of the 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 North Plains. At such special hearing, the Council may determine to abandon the project as allowed in the initial public hearings.

2.01.070 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 benefitted 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 recorder's office. Notice of such proposed assessment shall be mailed to the owner of each lot proposed to be assessed at the owner's address as shown on the Washington County Tax Assessor's rolls, which notice shall state the amount of assessment proposed on the owner's property and shall fix a date by which time objections shall be filed with the City 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. The notice of proposed assessment shall provide for a rate of interest to be paid on assessments bonded under the Bancroft Bonding Act and ORS chapter 223.

2.01.080 Method of Assessment and Alternative Methods of Financing.

- (1) 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 bonds only a partial payment or no payment by the benefitted property of the costs of the improvement.

- (2) Notwithstanding other provisions of this chapter, the Council hereby authorizes the financing of local improvements by the issuance of general obligation bonds in accordance with the procedures provided by state law except as otherwise provided herein. General obligation improvement bonds may be issued when authorized by ordinance for each contract for the construction of a local improvement district in an amount equal to:
 - (a) The amount to be paid by the City to the contractor for the construction of a local improvement, not exceeding the bid price of each contract, plus 15 percent for approved change orders; and
 - (b) All engineering, legal and administrative costs expended on the local improvements.
- (3) From time to time, the Council may, upon recommendation of the City Recorder, call for bids on the interest rate for general obligation improvement bonds on the estimated amount of the proposed assessments for local improvement districts, authorized or to be authorized. Bids shall meet the conditions and requirements provided for in the authorizing ordinance.
- (4) Upon return of the bids, the Council may award to the highest and best-qualified bidder offering the most advantageous interest rate the full amount of general obligation improvement bonds to be issued for local improvements specified in the ordinance requesting bids. Provided further, the Council may reject any and all bids.
- (5) The ordinance authorizing the call for bids shall also authorize the issuance of the general obligation improvement bonds to the successful bidder as determined by the Council, subject to the provisions of this chapter. Thereafter, the City Recorder is authorized to deliver to the successful bidder from time to time as she deems necessary, general obligation improvement bonds in an amount equal to the estimated amount payable by the City, pursuant to contracts for the construction of local improvements not exceeding the bid price of each contract, plus 15 percent for approved change orders.
- (6) General obligation improvement bonds shall be issued in denominations as stated in the ordinance authorizing call for bids, shall be numbered consecutively, shall be dated the first day of the month in which they are delivered to the successful bidder, and shall mature within the time provided by state law. The successful bidder shall pay accrued interest from the date of the bonds to the time of delivery.

- (7) Upon completion of any local improvement contract and the spreading of assessments upon the property benefitted thereby, all proceeds from the collection of un-bonded assessments, the sale of improvement bonds, and the foreclosure of improvement liens for un-bonded assessments realized from the local improvement with respect to which such general obligation improvement bonds are issued, shall be transferred from the local improvement district assessment fund created for that particular improvement and applied to the call and payment of such bonds as rapidly as funds are available, as provided by statute.
- (8) Nothing contained in this chapter shall preclude the Council from using any other available means of financing improvements, including federal and 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.

2.01.090 Remedies.

Subject to the curative provisions of section 2.01.160 and the rights of the City to reassess as provided in section 2.01.170 of this chapter, 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's 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 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.

2.01.100 Notice of Assessment.

Within 10 days after the ordinance levying assessments 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 North Plains, 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.

2.01.110 Lien Records and Foreclosure Proceedings.

After passage of the assessment ordinance by the Council, the City Recorder shall enter in the docket of the 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 North Plains 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; 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.

2.01.120 Errors in Assessment Calculations.

Claimed errors in the calculation of assessment 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 correct notice of assessment by registered or certified mail.

2.01.130 Supplemental 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 insufficiency and prepare a proposed supplemental assessment. The Council shall set a time for a hearing of objections to such supplemental assessment and shall direct the City Recorder to publish one notice thereof in a newspaper of general circulation in the City of North Plains. After such hearing, the Council shall make a just and equitable supplemental assessment by ordinance, which shall be entered in the docket of City liens as provided by this chapter, and notices of the supplemental assessment shall be published and mailed, and the collection of the assessment shall be made in accordance with sections 2.01.100 and 2.01.110 of this chapter.

2.01.140 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.

2.01.150 Abandonment of Proceedings.

The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this chapter 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.

2.01.160 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 2.01.010 of this chapter, 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 chapter; 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.

2.01.170 Reassessment.

Whenever any assessment, supplemental assessment, 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, supplemental 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.

(ORD. 117 October 19, 1981.)