

**ORDINANCE NO. 131**

**AN ORDINANCE PROVIDING PROCEDURES FOR MAKING LOCAL IMPROVEMENTS, FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS AND REPEALING ORDINANCE NO. 1730, AS AMENDED BY ORDINANCE NOS. 2040, 2411, 2608, 2866, 2911; AND AS AMENDED BY 189.**

The City of Coos Bay ordains as follows:

**Section 1. Short Title.** This ordinance shall be known as the Local Improvement Ordinance.

**Section 2. Definitions.** As used in this ordinance, the following shall mean:

**Local improvement** includes:

- (1) The grading, graveling, paving, or other surfacing of any street, or opening, laying out, widening, extending, altering, changing the grade of or constructing any street;
- (2) The construction or reconstruction of sidewalks;
- (3) The installation of street lights;
- (4) The installation of underground wiring or related equipment;
- (5) The reconstruction, or repair of any street improvement;
- (6) The construction, reconstruction or repair of any sanitary or storm sewer;
- (7) The acquisition, establishment, construction or reconstruction of any off-street motor vehicle parking facility;
- (8) The construction, reconstruction, alteration, relocation or repair of any flood control dike, dam, flood way, or drainage facility;
- (9) The construction, reconstruction, installation and equipping of a park, playground or neighborhood facility;

(10) Any other local improvement for which an assessment may be made on the property specially benefitted.

**Local Improvement District.** The property which is to be assessed for the cost or part of the cost of local improvement and the property on which the local improvement is located.

**Lot.** A lot, block or parcel of land.

**Owner.** The record holder of legal title or the purchaser where land is being purchased under a land sale contract recorded or verified in writing by the record holder of legal title to the land.

**Property benefitted.** All real property specially benefitted by the public improvement and assessable therefor.

### **Section 3. Initiating Improvements.**

(1) When the Council considers it necessary to make a local improvement to be paid for in whole or in part by special assessment according to benefits conferred, the Council shall direct the Director of Public Works to have a survey made of the improvement and file a written report with the Recorder.

(2) When owners of two-thirds of the property that will benefit by improvements request by written petition that the Council initiate an improvement and submit a \$1,000.00 bond in favor of the city, the Council shall direct the Director of Public Works to have a survey made of the improvement and file a written report with the Recorder. The bond shall be forfeited to cover the costs of engineering in the event the improvement district is not formed.

### **Section 4. Public Works Director's Report.** Unless the Council, directs otherwise, the Public Works Director's report shall contain the following:

(1) A plat or map showing the general nature, location and extent of the proposed improvements and the lands to be assessed to pay all or any part of the cost thereof;

(2) Plans, specifications and estimates of the work to be done;

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

(4) 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

property specially benefitted;

- (5) An estimate of the unit cost of the improvement to the specially benefitted properties;
- (6) A description of the location and assessed value of each parcel of land, or portion thereof, to be specially benefitted by the improvement, with the names of the record owners thereof as herein defined;
- (7) A recommendation of the payment schedule and interest to be charged on assessments paid in installments;
- (8) A statement showing outstanding assessments against property to be assessed;
- (9) Any other information required by the Council,

**Section 5. Action on Report.** After the Public Works Director's report is filed with the Recorder the Council may approve the report, modify the report and approve it as modified, require Public Works to supply additional or different information for the improvement, or abandon the improvement.

**Section 6. Resolution and Notice of Hearing.** After the Council has approved the report as submitted or as modified, the Council shall declare by resolution that it intends to make the improvement and direct the Recorder to give notice of the Council's intent by publication, not less than 10 days prior to the public hearing, in a newspaper of general circulation in the city and by mailing copies of the notice to the owner of any lots which would be property benefitted by the proposed improvement. The notice shall contain the following:

- (1) That the report of the Public Works Director 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 at which time objections and remonstrances to the improvement will be heard by the Council, and that the improvement will be abandoned for not less than six months if written remonstrances are filed before or during the hearing by owners of lots representing 67% of the estimated assessed cost of the improvement.
- (3) A general description of the proposed improvement and a description of the property sufficient for the average reader to determine the general location.
- (4) In addition, the notice mailed shall estimate the total cost of the improvement, the portion to be paid by special assessment, and the estimate of the unit cost of the improvement to the property benefitted.

**Section 7. Remonstrance Against Formation of Local Improvement District.**

- (1) If written, signed objections to the establishment of a local improvement district are filed with the Recorder by the end of the public hearing on the establishment of the district by the owners of lots which represent 67 percent of the estimated assessed cost of the proposed local improvement, the Council shall not make the proposed improvement nor shall the Council reinstate formation of the district until at least six months after the date of the public hearing.
- (2) If there is multiple ownership of a lot, each remonstrating multiple owner shall be counted as a fraction to the same extent as the owner's interest in the lot bears in relation to the other multiple owners, and the same fraction shall be applied to the lot's proposed assessment for purposes of computing the remonstrance.
- (3) Any person acting as agent or attorney with power to act in signing a remonstrance shall, in addition to describing the property affected, file with the remonstrance a copy in writing of the authority to represent the owner of the property.

**Section 8. Public Hearing.** The Council shall hear and consider testimony, both oral and written, on the proposed improvement and may continue the hearing as it deems necessary.

**Section 9. Creation of District.** If written remonstrances are less than the amount required to defeat the proposed improvement, the Council may by motion at the close of the hearing or within 60 days thereafter, based on the public testimony, order the improvement district created in accordance with the engineer's report or abandon the improvement.

**Section 10. Modification.** After the public hearing, the Council may direct a modification of the proposed local improvement by revising the scope of the improvement, by reducing or enlarging the local improvement district which it deems will be benefitted by the improvement, or by making such other modifications in the proceedings as it finds reasonable. In such case, a revised report must be made, notices mailed and published, and a second hearing held, all as set forth in sections 4 through 9.

**Section 11. Alternative Procedure.** When all of the owners of property to be benefitted by a local improvement have signed a petition directed and presented to the Council requesting the local improvement, the Council may initiate and construct the local improvement without publishing or mailing notice to the owners of the affected property and without holding a public hearing regarding the proposed local improvement.

**Section 12. Construction of Improvement.** The Council may direct the Recorder to advertise for bids for such improvements or portions thereof as it has approved, or the city itself may proceed to make said improvement or any portion thereof. If the Council finds on opening bids that the cost of the improvement would be substantially in excess of the

estimate, it may provide for holding a special hearing to consider objections to proceeding with a higher project cost.

**Section 13. Costs of Improvement.** The costs and expenses of local improvement that may be assessed against the property benefitted shall include, but not be limited to costs of construction of the improvement, engineering and administrative costs of creating the district and letting the bids, inspection costs, financing costs including interest, costs of acquisition of any easements or other property, and attorney fees.

**Section 14. 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 boundaries 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 benefitted 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 other character of the work warrants only partial payment or no payment of the cost by owners of benefitted properties.

(2) 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 finance. If other means of finance are used, the Council may levy special assessments according to benefits derived to cover any remaining cost.

**Section 15. Assessment Ordinance.**

(1) When the estimated cost is determined on the basis of contract award or city cost or after the work is done and the cost has been actually determined, the Council shall decide whether the benefitted property shall bear all or a portion of the cost. The Recorder shall prepare the proposed assessment for each lot within the local improvement district and file the assessments in the 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 Coos County Tax Assessor's roll. The notice shall state the amount of assessment proposed on the property and fix a date by which time objections shall be filed with the Recorder. An objection shall state the grounds for the objection. The notice shall also specify the date of the

Council meeting at which the Council will sit as a board of equalization and will conduct 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, declare and levy the assessment and direct the Recorder to enter a statement thereof in the docket of city liens as provided for in Section 17 of this ordinance.

#### **Section 16. Notice of Assessment.**

(1) Within 10 days after the ordinance levying assessments has been passed, the Recorder shall send a notice of assessment to each owner of assessed property by 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 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 to pay the assessment in installments within 10 days after the date of the publication of notice or pays the assessment in full within 60 days after the effective date of the assessment ordinance.

[Section 16 amended by Ordinance No. 189, passed November 3, 1992]

#### **Section 17. Lien Record and Foreclosure Proceedings.**

(1) After the assessment ordinance is adopted, the Recorder shall enter into the docket of liens a statement of the amount assessed on each lot, a description of the improvement, names of property owners, and the date of the assessment ordinance. On entry into the lien docket the amounts shall become liens and charges on the lots 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 effective date of the assessment ordinance, interest shall be charged at the rate set by the Council, and the City may foreclose or enforce collection of assessment liens in the manner provided by state law.

- (4) The City may enter a bid on property being offered at a foreclosure sale. The City shall have priority over all bids except those made by persons who would be entitled under state law to redeem the property.

**Section 18. Error in Assessment Calculation.** Claimed errors in the calculation of assessments shall be called to the attention of the 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 certified mail.

**Section 19. 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 improvements, 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 Recorder to publish one notice of the hearing in a newspaper of general circulation in the city. 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 17. Notice of the supplemental assessment shall be published and mailed, and collection of the assessment shall be made, in accordance with Sections 16 and 17.

**Section 20. 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 it or that person's legal representative shall be entitled to payment of the rebate credit.

**Section 21. Abandonment of Proceedings.** The Council may abandon proceedings for improvements at any time before final completion of the improvements. If liens have 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.

**Section 22. Curative Provisions.**

- (1) An improvement assessment shall not be rendered invalid by reason of:
- (a) Failure of the Public Works Director's report to contain all information required by Section 4.
  - (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.

**Section 23. 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 24. Withholding Building Permit.** If payments on assessments are delinquent, no building permit shall be issued for improvement of the benefitted real property.

**Section 25. Partition.** When there has been an approved partition of a parcel and that parcel has outstanding a special assessment remaining wholly or partially unpaid, and full payment or an installment payment is not due, then any owner, mortgagee or lien holder of any property affected by this partition may apply for an apportionment of the special assessment. Apportionment of the special assessment shall be done by resolution of the Council, and that resolution shall be filed with the lien docket. Where the special assessment is being paid in installments, the installments remaining unpaid shall be prorated among those smaller parcels so that each parcel shall be charged with the percentage of the remaining installment payments equal to the percentage of the unpaid assessment charged to the parcel upon apportionment. Apportionment shall be on the same basis as the original assessment.

**Section 26. Repeal.** Ordinance No. 1730, enacted March 13, 1950, as amended by Ordinance No. 2040, enacted September 14, 1959, No. 2411, enacted May 11, 1970, No. 2608, enacted July 22, 1974, No. 2866, enacted February 22, 1982, and No. 2911, enacted October 24, 1983, relating to special assessment for public improvements, is hereby repealed; provided, however, that the procedure for the making and collecting of any special assessment commenced prior to the effective date of this ordinance shall be governed by the ordinances in effect at that time.

Passed by the Council and approved by the Mayor January 24, 1989.