

ORDINANCE NO. 268**AN ORDINANCE PROVIDING FOR THE PRIORITY OF LIENS AND CREATING A UNIFORM PROCEDURE FOR THE RECORDING AND COLLECTION OF LIENS**

The City of Coos Bay ordains as follows:

Section 1. Definitions.

Abatement Lien. A lien created as a result of the provision of goods or services by the City after the City Council has found that the provision of such goods and services is necessary to protect public health or safety.

Assessment. A levy upon the owners of property adjacent to a public improvement to defray the costs of constructing the improvement.

Assessment Lien. A contractual lien created by an installment repayment contract entered into between an owner and the City for the repayment of costs of a local improvement.

City. The City of Coos Bay

Collection Costs. Any and all costs associated with the collection and foreclosure of an assessment or lien, including administrative costs, court costs, and attorney's fees.

Delinquency. For an assessment lien, any installment which unpaid for a period of one year from the time the installment becomes due and payable; for an assessment and all other liens, any payment unpaid for a period of sixty days from the date the assessment or other lien is entered in the City lien docket.

Final Lien. The actual cost, charge, security or other encumbrance owed to the City of Coos Bay for an assessment, assessment lien, abatement lien or other lien, as determined by the City Council.

Foreclosure Sale. The legal process whereby the City exercises its power to sell real property to which an assessment or assessment lien, abatement lien or other lien has attached.

Lien. All charges, securities or encumbrances upon real property for the payment debt, penalties, or other obligations owed to the City of Coos Bay, other than an assessment, assessment lien for a local improvement, or abatement lien.

Lien Debtor. the owner of the real property to which an assessment, assessment lien, abatement lien or other lien has attached, or the owner's authorized agent.

Redemption. The legal right conferred upon lienors to have the title restored by repurchase.

Director. The Finance Director for the City of Coos Bay, or his or her designee.

Section 2. Creation and Perfection of Liens and Assessments.

(a) If the City Council finds work is to be performed, material furnished or equipment rented for the abatement of a nuisance, substandard building or dangerous building, then the City Manager shall determine the estimated cost, based on the contract price or cost to be incurred by the City, and shall prepare a Statement of Estimated Lien. The City Manager shall forward the Statement of Estimated Lien to the Director, who shall enter the amount as an estimated lien in the City lien docket, which shall continue as an estimated lien until such time as the amount of the final lien has been determined and entered in the City lien docket.

(b) In the case of liens other than assessments, assessment liens, or abatement liens, the City Manager shall determine the amount of the charge, security or encumbrance upon real property for the payment debt, penalty, or other obligation owed to the City of Coos Bay, and shall prepare a Statement of Estimated Lien, which shall be forwarded to the Director, and entered on the City lien docket as an estimated lien as provided by subsection (a) of this section.

(c) Assessments and assessment liens shall be created and perfected as provided by City of Coos Bay Ordinance No. 131 and Oregon law.

Section 3. Notice of Estimated Lien.

(a) Upon receipt of a Statement of Estimated Lien, the Director shall enter the amount in the City's lien docket and shall cause a Notice and Statement of Estimated Lien to be mailed to the lien debtor at the lien debtor's address as indicated on the most recent Coos County tax roll, or personally delivered to the lien debtor. The Notice and Statement shall state that objections to the estimated lien must be filed with the Director within twenty days of the date of mailing of the Notice and Statement of Estimated Lien or personal delivery thereof, as the case may be, and that any objection shall state with particularity the grounds for the objection.

(b) Upon receipt of a timely and properly filed objection to Notice and Statement of Estimated Lien filed by the lien debtor, the City Manager shall schedule a review before the City Council of the grounds for the objection.

(c) After review before the Council, or after the expiration of the twenty-day period for filing objections, if no objection has been received, the City Manager shall prepare a resolution, stating the amount of the final cost and providing that the final cost is a final lien on the property. After adoption by the Council, the City Manager shall forward the resolution to the Director for entry as the final lien on the City's lien docket.

(d) Notice of assessments and assessment liens shall be made as provided by City of Coos Bay Ordinance No. 131 and Oregon law.

Section 4. Notice of Lien. After entry of the final assessment, final assessment lien, final abatement lien, or other final lien on the lien docket, the Director shall prepare a Notice of Lien in substantially the following form:

NOTICE OF LIEN

City of Coos Bay Lien Docket Number:

To: [name of property owner or owners]
[address]

NOTICE IS GIVEN that the City of Coos Bay, an Oregon municipal corporation, claims a lien on the following described real property:

The City of Coos Bay submits the follow account of the basis of the lien:

- (1) [state basis for lien, including ordinance and section number]
- (2) The labor performed consisted of [describe activity], and the materials supplied and their prices are listed as follows:

Item

Price

OR

- (2) The [services provided][penalty assessed][describe the services provided]

or action for which penalty was assessed] and the amount of the [debt][penalty] is as follows:

- | | <u>[Service][Action]</u> | <u>Amount</u> |
|-----|--|---------------|
| (3) | The City of Coos Bay lien on [insert property description], in the amount of [*] dollars (\$[*]), represents the value of [state basis of lien] for which the City of Coos Bay has not received payment. | |
| (4) | No part of the [*] dollars (\$[*]) set forth above has been paid by [name of property owner], which, after all just offsets, leaves an unpaid balance of [*] dollars (\$[*]) still due and owing the City of Coos Bay. | |

OR

- (4) [*] dollars (\$[*]) of the [*] dollars (\$[*]) has been paid by [name of the property owner], which leaves an unpaid balance of [*] dollars (\$[*]) still due and owing the City of Coos Bay

Dated this __ day of _____, 19__.

[*], Mayor
City of Coos Bay

ATTEST: _____
[*]
Recorder, City of Coos Bay

The Director shall mail a copy of the Notice of Lien by first class mail to the lien debtor at the lien debtor's address as indicated on the most recent Coos County tax roll, and shall enter the amount of the final lien on the City's lien docket.

Section 5. Interest. Except as otherwise specifically provided by ordinance, resolution, assessment contract or other instrument entered into between the lien debtor and the City, all liens shall bear interest at the statutory rate from the date of the entry of the final lien on the City's lien docket.

Section 6. Priority. All liens, including but not limited to assessments, assessment liens, abatement liens and all other liens are liens upon the land against which the lien is entered, and shall have priority over all other liens and encumbrances.

Section 7. Delinquency. Assessment liens are due and payable as provided by the installment repayment contract, and are delinquent after one year from the date that any installment payment becomes due and payable and remains unpaid; abatement liens and all other liens are due and payable at the time of entry in the City lien docket, and are delinquent if unpaid after sixty days from the time of entry in the City lien docket.

Section 8. Preparation of Delinquency List; Transmission of List.

(a) Not less than once annually, the Director shall prepare a list of each assessment, assessment lien, abatement lien or other lien which is delinquent. The list shall describe each lien which is delinquent, and shall contain the name of the person identified as the owner in the Coos County tax rolls, a legal description of the property, the amount of the assessment, assessment lien, abatement lien or other lien, and any other facts deemed by the Director to be relevant in evaluating the property for foreclosure.

(b) The Director shall forward the delinquency list to the City Council. After review, the Council shall, by resolution, direct the City Attorney to commence foreclosure proceedings on properties determined to be suitable for foreclosure.

Section 9. Authority to Sell Property for Delinquent Assessments, Assessment Liens, or Liens.

The City may cause the sale of real property for any assessment lien for a local improvement at any time after one year from the date an installment on any such assessment lien becomes due and payable, or for any assessment, abatement lien or other lien at any time after sixty days from the time the lien is entered as a final lien on the City lien docket.

Section 10. Collection Authority. The Director shall collect all unpaid assessments, assessment liens, abatement liens and other liens, take all steps necessary to enforce delinquent assessments, assessment liens, abatement liens and other liens, and maintain all records pertaining to collections proceedings.

Section 11. Special Repayment Plan.

(a) The Director may enter into special repayment plans with any person who has a delinquent assessment lien, abatement lien or other lien and who is unable to bring their delinquency current within one year from the date of delinquency. Any person seeking to enter into a special repayment plan shall apply to the Director, in writing, and submit proof demonstrating the person's inability to pay the delinquency in cash and to maintain the repayment schedule for future payments.

(b) The special repayment plan shall be based on the applicant's ability to pay. The plan shall be reviewed every three years, and shall be revised based on the applicant's then current ability to pay. The special repayment plan payments may extend the repayment schedule for the assessment lien, abatement lien or other lien, but shall not otherwise modify the amount of principal, interest, or other terms of the assessment lien, abatement lien or other lien.

(c) Payments under the special repayment plan shall first be applied to interest then due, then to interest past due, and then to principal. The minimum payment under any repayment plan shall be equal to the interest then accruing on the unpaid assessment lien, abatement lien or other lien, plus a billing charge. At the conclusion of the repayment plan, the payment schedule of the original assessment lien, abatement lien or other lien shall be re-instituted.

(d) All repayment plans shall be in writing, and shall contain a provision which provides for immediate foreclosure in event the lien debtor fails to meet his or her obligation under the repayment plan, unless the lien debtor can demonstrate to the satisfaction of the Director that an emergency condition caused the default.

Section 12. Procedure for Sale. The City Attorney shall proceed to collect all unpaid assessments, assessment liens, abatement liens or other liens identified in the resolution adopted pursuant to Section 8 of this ordinance by advertising and selling the lots or tracts in the manner provided by law for the sale of real property on execution, except that the sale may be made at such place within the City of Coos Bay as may be designated in the notice of sale.

Section 13. Notice of Sale.

(a) **Contents of Notice.** Notice of the sale shall be printed once a week for four successive weeks in a daily or weekly newspaper of general circulation within Coos County. The Notice of Sale shall contain the following information:

- (1) the name and address of the Director;
- (2) the legal description of the real property to be sold, along with the street address;
- (3) the name of the lien debtor;
- (4) the unpaid amount of the assessment, assessment lien, abatement lien or other lien;
- (5) the date, time and place of the sale.

(b) Persons to Whom Notice Provided.

(1) The Director shall, at time of publication, send a copy of the first of the four published notices by registered or certified mail to the following persons:

(A) the lien debtor at the lien debtor's address as reflected on the Coos County tax rolls;

(B) to the occupant, if any, of the real property to be sold;

(2) At least sixty days prior to sale, the Director shall provide a notice containing the information set out in subsection (a) of this section to the following persons:

(A) to any person who, pursuant to ORS 86.785, has filed for record in the office of the Coos County Clerk a duly acknowledged request for a copy of any notice of sale;

(B) To any person having a recorded lien or other interest of record in the real property to be sold.

(3) The Director shall retain and file the return receipt with the lien debtor's file.

Section 14. Conduct of Foreclosure Sale.

(a) Each parcel of land to be foreclosed upon shall be sold separately, for a sum equal to, but not greater than, the unpaid assessment, assessment lien, abatement lien or other lien, plus interest, penalties, costs of advertising and costs of sale, including attorney's fees.

(b) Any foreclosure sale may include in the sale any and all unpaid assessments, assessment liens, abatement liens and other liens against the property, provided that each assessment, assessment lien, abatement lien and other lien has been identified in the notices required under Section 13.

(c) If more than one bid is submitted, the parcel shall be sold to the bidder first offering the amount sufficient to satisfy the amount set forth in subsection (a) of this section. The City may purchase the property by bidding the amount of the assessment, assessment lien, abatement lien and other lien, plus costs of advertising and costs of sale, provided no other bid is received. All foreclosure sales shall be for cash only, unless the property is purchased by the City, which may purchase the property without the payment of money.

(d) Any real property which remains unsold may be re-offered for sale not sooner than three months after the expiration date of the sale. Any re-offering shall comply with the notice requirements of Section 13.

Section 15. Title of Purchaser; Certificate of Sale.

(a) A sale of property pursuant to this ordinance conveys to the purchaser all estates, interests, liens or other claims of any persons, except any assessments or liens of another governmental unit that are not included in the sale, subject to the lien debtor's redemption rights, as provided by ORS 223.565-223.593.

(b) Immediately after a sale of property, the Director shall make and deliver to the purchaser a certificate of sale, setting forth a description of the property; the amount of the sale; the purpose for which the sale was made; the nature of assessment, assessment lien, abatement lien or other lien for which foreclosure was instituted; the name of the purchaser; and that the sale is subject to the lien debtor's redemption rights for one year from the date of the certificate.

Section 16. Entry in Lien Docket.

(a) Within three days of the date of sale, the Director shall enter on the City lien docket the following information:

- (1) the name of the purchaser;
- (2) the amount paid for the parcel.

Section 17. Redemption.

(a) The lien debtor, the lien debtor's legal representative or successor in interest, or any person having a lien on the property by virtue of a judgment, decree or mortgage or the holder of a tax lien may redeem the property by paying in cash to the City, any time within one year from the date of the certificate, the purchase price, plus a penalty equal to 10% of the purchase price, along with interest on the purchase price at the rate of 10% per annum from the date of the certificate, and the amount of any taxes, assessments, or other liens upon the property that are paid after purchase by the purchaser at the sale. Redemption shall discharge the property from the effect of the sale, and if the property is redeemed by a lien creditor, the amount paid to redeem the property shall be deemed a part of the judgment, decree, mortgage or tax lien, as the case may be, and shall bear interest and may be enforced and collected as part of the judgment, decree, mortgage or tax lien.

(b) After one year from the date of the certificate of sale, if the property has not been redeemed, the Director shall execute a deed of conveyance to the purchaser, or the purchaser's heirs or assigns, containing a description of the property, the date of the sale, a statement of the amount of the bid, a statement of the amount of the assessment, assessment lien, abatement lien or other lien, and a statement that the final assessment or other final lien was unpaid at the time of sale and no redemption has been made.

(c) The effect of the deed shall be to convey to the purchaser, and the purchaser's heirs or assigns, title in fee simple, excepting only liens for other governmental unit assessments.

Section 18. Other Foreclosure Proceedings. In lieu of the procedure set forth in this Ordinance, the City may seek judicial foreclosure as provided by law.

Section 19. Emergency Clause. Because payment of assessments, assessment liens, abatement liens and all other liens is necessary for the peace, health, and safety of the people of the City of Coos Bay, an emergency is declared to exist, and this ordinance shall be effective upon its passage.

Section 20. Severability. The sections and subsections of this ordinance are severable. The invalidity of any one section or subsection shall not affect the remaining sections and subsections.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay on the 15th day of December, 1998.