

DUNES CITY, OREGON

ORDINANCE No. 44

AN ORDINANCE PRESCRIBING METHODS AND PROCEDURES FOR MAKING LOCAL IMPROVEMENTS, FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS THEREFORE, AND FOR THE CREATION AND ENFORCEMENT OF ASSESSMENT LIENS:

THE CITY OF DUNES CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS: As used in this Ordinance, unless the context requires otherwise:

(1) "Local Improvement" means:

- (A) 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;
- (B) The construction or reconstruction of sidewalks;
- (C) The installation of ornamental street lights;
- (D) The installation of underground wiring or related equipment;
- (E) The reconstruction or repair of any street improvement mentioned in this subsection.

(2) "Owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the office of the County Assessor.

(3) "Lot" means lot, block or parcel of land.

The property which is to be assessed for the cost or part of the cost of a local improvement and the property on which the local improvement is located shall be known together as a "Local improvement district".

SECTION 2. INITIATION OF LOCAL IMPROVEMENTS;
RESOLUTION OF INTENTION.

(1) Whenever the owners of 3/4 of the property to benefit specially from the local improvement shall, by written petition, request the Council to make a local improvement, the Council, by resolution, shall declare its intention to make the local improvement.

(2) The improvement resolution shall describe the general nature, location and extent of the proposed local improvement and of the proposed local improvement district, declare the Council's intention to make the improvement, indicate the method and manner of carrying out the improvement, contain an estimate of the probable total cost of the improvement, indicate 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, set a public hearing on the improvement, and direct that notice be given of the proposed improvement and of the public hearing.

(3) The improvement resolution may include alternative proposals relating to a proposed local improvement; provided, however, that all of the information required for a particular local improvement shall be included for each alternative proposal.

SECTION 3. NOTICE OF HEARING.

(1) After adoption of the improvement resolution, the City Recorder shall cause notice of the proposed improvement and of the public

hearing to be given by one publication not less than ten (10) days prior to the public hearing in a newspaper of general circulation within the City and by mailing copies of the notice by registered or certified mail to the owner of a lot affected by the proposed improvement, and by posting copies of the notice conspicuously within the limits of the proposed local improvement district.

(2) The notice shall contain:

- (A) A general description of the proposed local improvement and the property to be specially benefited thereby. The description of property need not be by metes and bounds, but shall be such that an average person can determine from it the general location of the property;
- (B) An estimate of the total cost of the improvement and the portion anticipated to be paid for by special assessments;
- (C) The time and place of the public hearing;
- (D) A statement of a place where preliminary project design and other additional information concerning the improvement is available to the public;
and
- (E) Any other information the Council may direct to be included.

(3) Any mistake, error, omission or failure with respect to the mailing of notice shall not be jurisdictional or invalidate the local improvement proceedings.

SECTION 4. HEARING.

(1) At the time of the public hearing, the Council shall

hear and consider testimony, both oral and written, on the proposed local improvement and may continue the hearing as it deems necessary. After such hearing the Council may, in its discretion, order the local improvement to be made. If the Council elects to order such improvement, it shall, within ninety (90) days after the date of the hearing, provide by resolution for the establishment of the local improvement district and the construction of the improvement.

(2) Notwithstanding the fact that the proposed improvement was petitioned for by 3/4 of the benefited property owners, the Council may refuse to proceed with the improvement if it finds the proposed improvement to be untimely or not in the best interests of the City of Dunes City.

(3) At 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 benefited by the improvement, or make such other modifications in the proceedings as it finds reasonable. If the Council modifies the scope of the improvement so that assessment is likely to be increased substantially upon one or more lots, or if the Council enlarges the local improvement district or if the Council causes a substantial change in any of the particulars contained in the improvement resolution, a new improvement resolution shall be adopted, new estimates made and new notices mailed to the owners within the proposed local improvement district. However, no new publication shall be required.

SECTION 5. CREATION OF LOCAL IMPROVEMENT DISTRICT.

The Council, by resolution, shall provide for the estab-

lishment of the local improvement district and the making of the local improvement in substantial conformity with the proposal set forth in the initiating resolution.

SECTION 6. MANNER OF DOING WORK.

Local improvement may be made in whole or in part by the City, by another governmental agency, by contract, or by any combination thereof.

SECTION 7. CONSTRUCTION OF IMPROVEMENT: BIDS.

(1) Immediately after the effective date of the resolution establishing the local improvement district, the City shall cause necessary right-of-way and easements to be acquired and the improvement to be made in accordance with the terms of said resolution if the work is to be performed by the City or another governmental agency. If any part of the work of the improvement is to be done under contract bids, the City shall cause detailed plans and specifications to be prepared and filed and notice calling for bids to be published in a newspaper of general circulation within the City not less than five days prior to the opening of bids.

(2) Contracts for all or part of the work of the local improvement may be let by the Council to the lowest responsible bidder whose bid is in the best interests of the City as determined in the sole discretion of the Council. The Council shall have the right to reject any or all bids when they are deemed unreasonable or unsatisfactory in the Council's discretion. If the Council rejects all bids, it may direct

the City to readvertise for bids or direct the work to be performed by City forces. The City shall provide for the bonding of all contracts 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 Dunes City.

(3) If the Council finds upon opening bids for the work of such improvement, that the bid in the best interest of the City is substantially in excess of the City Engineer's estimate, it may, in its discretion, provide for holding a special hearing to consider objections to proceeding with the improvement on the basis of such bid.

SECTION 8. COSTS AND EXPENSES.

The costs and expenses of local improvements which may be assessed against the property specially benefited by the improvement shall include the costs of construction and installation of the improvement; advertising, legal, administrative, engineering and assessment costs; financing costs, including interest charges; the costs of any necessary property, right-of-way or easement acquisition and condemnation proceedings; and any other necessary expenses.

SECTION 9. METHOD OF ASSESSMENT; ALTERNATIVE METHODS OF FINANCING.

(1) The Council, in adopting a method of assessment of the costs of any local improvement may:

- (A) Use any just and reasonable method of determining the extent of the local 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 benefited.

(C) Authorize payment by the City of all or any part of the costs of a local improvement when, in the opinion of the Council, the topographical or physical conditions, or unusual or excess public travel or use, or other characteristic of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the local improvement.

(2) Nothing contained in this ordinance shall preclude the Council from using any other available means of financing local improvements, including federal or state grants-in-aid, water or sewer fees or charges, revenue or general obligation bonds, or any other legal means of financing. If such other means of financing local 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 local improvement.

SECTION 10. ASSESSMENT PROCEDURE.

(1) When the estimated cost of an authorized local improvement has been ascertained on the basis of the City Engineer's estimate of costs, the award of a contract or any other basis acceptable to the Council, or after the work has been completed and the actual cost thereof has been determined, the City Recorder, or such other person as the Council may direct, shall prepare the proposed assessments to the respective lots within the local improvement district, and shall file it in the office of the City Recorder, and shall submit it to the Council. Such submission may be in the form of a proposed resolution.

(2) Upon the receipt of the proposed assessments, the Council shall, after any modifications, adopt a resolution directing notice of such pro-

posed assessments to be mailed or personally delivered to the owners, or reputed owners of the lots proposed to be assessed containing the following information:

- (A) The name of the owner, or reputed owner, the description of the property assessed, the total estimated or actual project cost assessed against benefited property and the amount of the assessment against the described property.
- (B) A date and time by which written objections to the proposed assessment, stating specifically the grounds for objection, must be received and the time and the date of a public hearing at which time the Council will consider any objections.
- (C) A statement that the assessment in the notice, or as it may be modified by the Council, will be levied by the Council after the hearing and that, thereafter, will be charged against the property and be immediately payable in full or in installments, if applicable.

(3) Supplementary notice of the proposed assessment and public hearing thereon, in form and content to be determined by the City Recorder, may also be published or posted by the City Recorder.

(4) The Council shall hold the public hearing on the proposed assessments to consider those objections filed in writing 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 local improvement district according to the special and peculiar benefits accruing thereto from the improvement, and shall, by Ordinance, spread the assessments.

SECTION 11. NOTICE OF ASSESSMENT.

(1) Within ten (10) days after the effective date of the

ordinance levying the assessments, the City Recorder shall send, by registered or certified mail to the owner of the assessed property, a notice containing the following information:

- (A) The date of the ordinance levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed.
- (B) A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this ordinance.
- (C) A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within thirty (30) days of the date of the letter and, if unpaid on that date, will accrue interest and subject the property to foreclosure.

(2) Supplementary notice of assessment in form and content to be determined by the City Recorder may also be published or posted by the City Recorder.

SECTION 12. LIEN RECORDS AND FORECLOSURE PROCEEDINGS.

After passage of the assessment ordinance by the Council, the City Recorder shall enter in the city lien docket, 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 Dunes City 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 seven per cent per annum until paid on all amounts not paid within thirty (30) days from the date of the letter notifying the owner of the ordinance levying the assessment; and, after expiration of thirty (30) days from said date, 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 13. ERRORS IN ASSESSMENT CALCULATIONS.

Claimed errors in the calculation of assessments shall be brought to the attention of the City Recorder, who shall determine whether there has, in fact, been an error. If the City 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. Upon enactment of any such amendment, the City Recorder shall cause the necessary correction to be made in the city lien docket and shall cause a corrected notice of assessment to be sent by registered or certified mail.

SECTION 14. INSTALLMENT PAYMENT OF ASSESSMENTS.

The Bancroft Bonding Act (ORS 223.205 to 223.300) shall apply to assessments levied in accordance with this ordinance. Unless otherwise provided in a particular assessment ordinance, the owner of any property

assessed for a local improvement in accordance with this ordinance in the sum of \$25.00 or more, at any time within thirty (30) days after notice of the assessment is first mailed (or within such time as the Council may, from time to time, establish), may file with the City Recorder a written application to pay the whole of the assessment in 20 semi-annual installments, together with interest thereon at the rate of seven per cent (7%) per annum, or, if any part of the assessment has been paid, the unpaid balance of the assessments in such installments with such interest.

SECTION 15. FILING OF ORDINANCES.

The City Recorder shall file copies of the resolution establishing a local improvement district and the assessment ordinance with the Director of Records and Elections of Lane County; provided, however, that failure to file such information shall not invalidate or affect any proceedings in connection with the local improvement district and shall not impose any liability on the City of Dunes City, the City Recorder or any official, officer or employee of the City.

SECTION 16. DEFICIT ASSESSMENTS.

If the initial assessment has been made on the basis of estimated cost and, upon the completion of the improvement, the actual cost is found to be greater than the estimated cost, the Council may make a deficit or supplemental assessment for the additional cost. Proposed assessments upon the respective lots within the local improvement district for the proportionate share of the deficit shall be made, notices sent, a public hearing held and opportunity for objections considered, and determination of the

assessment against each particular lot, block or parcel of land shall be made as in the case of the initial assessment; and the deficit or supplemental assessment spread by ordinance. The deficit assessments shall be entered in the city lien docket, notices published and mailed and the collection of the assessment made in accordance with the provisions of this ordinance relating to the original assessment.

SECTION 17. REBATES AND CREDITS.

If assessments have been made on the basis of estimated cost, and upon completion of the improvement project the cost is found to be less than the estimated cost, the Council shall ascertain and declare the same by ordinance, and when so declared, the excess amounts shall be entered on the city lien docket as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or his legal representative or successor, shall be entitled to repayment of the excess amount. If the property owner has filed an application to pay the assessment by installment, he shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of such refund shall be deducted from such assessment, and the remainder shall remain a lien on such property until legally satisfied.

SECTION 18. ABANDONMENT OF PROCEEDINGS.

The council shall have full power and authority to abandon and rescind proceedings for local improvements made under this ordinance at any time prior to the final completion of such improvements. If liens

have been assessed upon any property under such procedure, they shall be cancelled, and any payments made on such assessments shall be refunded to the person paying the same, his assigns or successors.

SECTION 19. CURATIVE PROVISIONS.

No improvement assessment shall be rendered invalid by reason of a failure to have all of the information required to be in any City Engineer's or City Recorder's report, the improvement resolution or ordinance, the assessment ordinance, the lien docket or notices required to be published, mailed or posted; nor by the failure to list the name of, or mail notice to, the owner of any property as required by this ordinance; nor 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. The Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

SECTION 20. REASSESSMENTS.

(1) Whenever all or part of any assessment for any local improvement has been or shall be declared void or set aside for any reason, or its enforcement refused by any court having jurisdiction thereof, or whenever the Council is in doubt as to the validity of all or any part of such assessment, the Council may make a new assessment or reassessment in the manner provided by the laws of the State of Oregon.

(2) For purposes of this Section, the term "assessment" includes deficit or supplemental assessments and reassessments.

SECTION 21. REMEDIES.

Subject to the curative provisions of Section 19 and the rights of the City to reassess pursuant to Section 20, all actions of the Council taken pursuant to this ordinance are reviewable solely and exclusively by writ of review in accordance with the procedures in ORS 34.010 to 34.100. Review of an ordinance levying any assessment may be commenced only by a property owner who has filed a written objection to the proposed assessment in accordance with Section 10 of this ordinance.

SECTION 22. SEGREGATION OF LIENS.

(1) Whenever the ownership of any portion of a tract of real property, less than the entire tract, is transferred, any lien against said real property in favor of the City shall, upon request of the owner of any portion of said tract, be segregated as herein provided and not otherwise.

(2) Applications for the segregation of liens shall be made to the City Recorder describing the tract to be segregated and the names of the owners of the respective tracts. A certificate of the County Assessor shall be furnished showing the assessed valuation of the various tracts of land concerned as of January 1 of the year in which the segregation is requested, if available; if not available, as of January 1 of the preceding year.

(3) The City Recorder shall thereupon compute a segregation of the lien against the real property upon the same basis as the same was originally computed and apportioned and reflect this segregation in the city lien docket; provided, however, that no segregation shall be made unless

all parts of the original tract of land after the segregation have a true cash value as determined from the certificate of the assessor of 60 percent or more of the amount of the lien as to the various tracts concerned.

SECTION 23. SEPARABILITY.

If any clause, sentence, paragraph, subsection, section or other part of this ordinance or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this ordinance or the application of such part held invalid to any other person or circumstances, but shall be confined in its operation to the part thereof directly involved in such holding or to the persons or circumstances therein involved.

SECTION 24. INTERPRETATION.

The provisions of this ordinance shall apply to all future local improvement districts and, to the extent further actions or proceedings may be required, to all existing districts.

AYES: 6
NAYS: 0
ABSTAIN: 0
ABSENT: 1

PASSED BY THE COMMON COUNCIL, this 10th day of JULY, 1975.
APPROVED BY THE MAYOR, this 11th day of JULY, 1975.



ROBERT R. READ - MAYOR

ATTEST:



PAT BARBER - CITY RECORDER