

ORDINANCE NO. 105

AN ORDINANCE PRESCRIBING METHODS AND PROCEDURES FOR MAKING LOCAL IMPROVEMENTS; FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS; FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS; FOR THE CREATION AND ENFORCEMENT OF ASSESSMENT LIENS; AND REPEALING ORDINANCE NO. 44.

Dunes City ordains as follows:

Section 1. Definitions. As used in this ordinance, the following words, except where the context requires otherwise, 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 ornamental street lights.
- (4) The installation of underground wiring or related equipment.
- (5) The reconstruction or repair of any street improvement mentioned in this subsection.
- (6) Any other local improvement, including those defined in ORS 223.387, for which an assessment may be made on the property specially benefited.

Local improvement district. The property which is to be assessed for the cost or part of the cost of a local improvement, together with the property on which the local improvement is located.

Lot. A lot, block or parcel of land.

Owner. 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.

Section 2. Initiation of Local Improvements; Resolution of Intention.

(1) If the council considers it necessary to require that improvements be made and paid for in whole or in part by special assessment, or if the owners of three-fourths of the property to benefit specially from an improvement request by written petition that the council make a local improvement, the council shall declare by resolution that it intends 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 councils's intent to make the improvement, indi-

cate 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. However, 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 recorder shall cause notice of the proposed improvement and of the public hearing to be given by one publication not less than 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 the following:

(a) A general description of the proposed local improvement and the property to be specially benefited. 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.

(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 the hearing, the council may order the local improvement to be made. If the council orders the improvement, it shall, within 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 three-fourths of the benefited property owners, the council may refuse to proceed with the improvement if it finds the proposed improvement is untimely or not in the best interest of the 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 by making other modifications as it finds reasonable. If the council modifies the scope of the improvement so that assessment is likely to be increased substantially on one or more lots, 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 will be required.

Section 5. Creation of Local Improvement District. The council, by resolution, shall provide for the establishment 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. The local improvement may be made in whole or in part by the city, by another governmental agency, by contract, or by any combination of the above.

Section 7. Construction of Improvement; Bids. The council may direct the recorder to advertise for bids for construction of all or part of the improvement project. If part of the improvement work is to be done under contract, the council shall proceed in accordance with procedures of state law for public contracting.

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 if, 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 precludes 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'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 has been determined, the recorder, or such other person as the council may direct, shall prepare the proposed assessment to the respective lots within the local improvement district, file it in the office of the recorder and submit it to the council. The submission may be in the form of a proposed resolution.

(2) Upon receipt of the proposed assessments, the council shall, after any modifications, adopt a resolution directing notice of the proposed assessments to be mailed or personally delivered to the owners, or reputed owners of the lots proposed to be assessed. The notice shall contain 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 the council will consider any objections.

(c) A statement that the assessment in the notice, as it may be modified by the council, will be levied by the council after the hearing and will thereafter be charged against the property and will be immediately payable in full or in installments, if applicable.

(3) Supplementary notice of the proposed assessment and the public hearing on the assessment may be published or posted by the recorder, in a form and content to be determined by the recorder.

(4) The council shall hold the public hearing on the proposed assessments to consider written objections and may adopt, correct, modify or revise the proposed assessments. The council shall determine the amount of assessment to be charged against each lot in the district according to the special and peculiar benefits accruing from the improvement, and shall, by ordinance, spread the assessments.

Section 11. Notice of Assessment.

(1) Within ten days after the effective date of the ordinance levying the assessments, the 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 an 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 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 may be published or posted by the recorder in a form and content to be determined by the recorder.

Section 12. Lien Records and Foreclosure Proceedings.

(1) After passage of the assessment ordinance by the council, the recorder shall enter in the city lien docket, a statement of the amounts assessed on each particular lot or portion thereof, together with a description of the improvement, the name of the owners and the date of the assessment ordinance. Upon entry in the lien docket, the amount entered is a lien and charge on the respective lots, or portions thereof, which have been assessed for the improvement.

(2) All assessment liens of the city shall be superior

and prior to all other liens or encumbrances on property insofar as the laws of the state permit.

(3) Thirty days after the date of the letter notifying the owner of the assessment ordinance, interest shall be charged, at the current legal rate of interest, on all amounts not paid, 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 for the property being offered at a foreclosure sale. The city bid shall be prior to all bids except those made by persons who would be entitled, under state law, to redeem the property.

Section 13. Errors in Assessment Calculation. Claimed errors in the calculation of assessments shall be brought to the attention of the recorder, who shall determine whether there has been an error. If the recorder finds 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 city lien docket and send a corrected notice of assessment by registered or certified mail.

Section 14. Installment Payment of Assessments. The Bancroft Bonding Act (ORS 223.205 to 223.295) 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 or more, at any time within 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 recorder a written application to pay the whole of the assessment in 20 semi-annual installments, together with interest at the current market rate, 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 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. However, failure to file the information shall not invalidate or affect any proceedings in connection with the local improvement district and shall not impose any liability on the city, the recorder, or any official, officer or employe 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 exceed the estimated cost, the council

may make a deficit or supplemental assessment for the additional cost. Proposed assessments on 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 shall be made as in the case of the initial assessment. The deficit or supplemental assessment shall be 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 are made on the basis of estimate cost, and upon completion of the project the cost is found to be less than the estimated cost, the council shall ascertain and declare the same by ordinance. When declared, the excess amounts shall be entered on the city 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. If the property owner has filed an application to pay the assessment by installment, the owner shall be entitled to the refund only when the installments, together with interest, are fully paid. If the property owner has neither paid the assessment nor filed an application to pay in installments, the amount of the refund shall be deducted from the assessment, and the remainder shall remain a lien on the property until legally satisfied.

Section 18. Abandonment of Proceedings. The council may abandon proceedings for local improvements made under this ordinance at any time prior to the final completion of the improvements. If liens have been placed on any property under this procedure, they shall be cancelled, and payments made on the assessments shall be refunded to the person who paid them or to that person's legal representative.

Section 19. Curative Provisions.

(1) An improvement assessment shall not be rendered invalid by reason of:

(a) Failure to have all the required information in any project report.

(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 20. Reassessments. When an assessment, deficit assessment, or reassessment for any local improvement has been set aside, annulled, declared or rendered void, or its enforcement refused by a court having jurisdiction, or when the council doubts the validity of all or any part of the assessment, the council may make a new assessment or reassessment in the manner provided by state law.

Section 21. Remedies. Subject to the curative provisions of section 19 and the rights of the city to reassess pursuant to section 20, proceedings for writs of review and other appropriate equitable or legal relief may be filed as provided by state law.

Section 22. Segregation of Liens.

(1) When the ownership of any portion of a tract of real property, less than the entire tract, is transferred, any lien against the property in favor of the city shall, upon request of the owner of any portion of the tract, be segregated as provided by this section.

(2) Applications for the segregation of liens shall be made to the 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, and if not available, as of January 1 of the preceding year.

(3) The recorder shall compute a segregation of the lien against the real property on the same basis as the original was computed and apportioned, and the segregation shall be reflected in the city lien docket. 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. Severability. The invalidity of any section or subsection of this ordinance shall not affect the remaining sections or subsections.

Section 24. Repeal. Ordinance No. 44, enacted July 10, 1975, is repealed. This repeal does not affect or invalidate any proceeding, action or assessment made under the terms of that ordinance.

Passed by the City Council of Dunes City, Lane County, Oregon, this 11th day of December, 1986, by the following vote:

Aye 6 Nay 0 Absent 1

APPROVED BY THE MAYOR THIS
15th DAY OF December, 1986.


JAMES E. BAUMEISTER, Mayor

ATTEST:


BETTY STOCKING, City Recorder