

City of The Dalles Ordinances

GENERAL ORDINANCE NO. 91-1127

AN ORDINANCE PRESCRIBING METHODS AND PROCEDURES FOR MAKING LOCAL IMPROVEMENTS; FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS; FOR CREATION AND ENFORCEMENT OF ASSESSMENT LIENS; AND REPEALING GENERAL ORDINANCE NOS. 658 AND 840, AS AMENDED, AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF THE DALLES DO ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, the following definitions apply, except where the context requires otherwise:

- A. "Local improvement" means a capital construction project, or part thereof undertaken by the City of The Dalles pursuant to this ordinance;
- (1) Which provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
 - (2) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and
 - (3) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least ten (10) years.

For purposes of subsection (A), the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the special benefit.

- B. "Single assessment" means the complete assessment process, including pre-assessment, assessment, or reassessment, as provided for in this ordinance.
- C. "Special benefit only to specific properties" shall have the same meaning as "special and peculiar benefit", as that term is used in ORS 223.389.

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- D. "Capital construction" means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, which is expected to have a useful life of more than one year, and includes, but is not limited to:
- (1) Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.
 - (2) Acquisition, installation of machinery or equipment, furnishings or materials which will become an integral part of a structure.
 - (3) Activities related to the capital construction, such as planning, design, acquisition of interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with the construction.
 - (4) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital construction.
- E. "Structure" means any temporary or permanent building or improvement to real property of any kind, which is constructed on or attached to real property, whether above, on or beneath the surface.
- F. "Capital improvements" means land, structures, facilities, as that term is defined in ORS 288.805, machinery, equipment or furnishings having a useful life longer than one year.
- G. "City Engineer" means the duly appointed City Engineer, or any consulting engineering firm who contracts with the City to provide engineering services.

Section 2. Combining improvements. Several proposed improvements may be combined in one proceeding, and may be described in one notice of publication.

Section 3. Initiation of Projects for Local Improvements. For a proposed local improvement district which includes only residential properties, such a project shall be initiated by the Council only in accordance with the written implementation policy as adopted by City Council resolution. The Council shall initiate a project for a local improvement by adopting a motion to direct the City Engineer to proceed in the manner outlined in Section 3 (A).

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For a proposed local improvement district which consists of non-residential properties, whenever the City Council considers it necessary that a local improvement be made and paid for in whole or in part by special assessment, or whenever the owners of a majority of the property to be included in the district which will benefit specially from the improvement file a written petition with the Council to make a local improvement, the Council shall by motion direct the City Engineer: [as amended by Ordinance 07-1277 adopted by City Council February 12, 2007.]

- A. To make a survey and written report of such project and file the report with the City Clerk within 30 days from the date of the resolution, unless council grants an extension of time. The report shall contain:
- (1) A plat or map showing the general nature, location, and extent of the proposed improvement and the lands to be assessed to pay any part of the costs thereof;
 - (2) A description of the type of the proposed improvement and an estimate as to the length of its useful life;
 - (3) A description of the location and land use of each lot, tract, or parcel of land or portion thereof, which will be specially benefitted by the improvement, together with the name of the owner thereof;
 - (4) A description of the boundaries of the district benefitted by and to be assessed for the improvement;
 - (5) The percentage of the land within the district which is vacant and unused for urban purposes;
 - (6) The assessed valuation of each lot, tract or parcel of land within the district according to the last county assessment roll, and the amount of the delinquent taxes and assessments, and the amount of taxes and assessments levied but not delinquent for each lot, tract and parcel of land within the district; and
 - (7) An estimate of the probable cost of the project, including legal, administrative, engineering, and construction costs attributable thereto, and any bond issuance costs, and a recommendation as to a fair apportionment of the whole or any portion of the cost of the project to the property specially benefitted, including any potential multi-frontage relief which may be available for a property which has frontage adjacent to more than one side of an unimproved street, in accordance with a formula for calculating such multi-frontage relief as is established by the City. [as amended by Ordinance 07-1277, adopted by Council February 12, 2007.]

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Section 4. Resolution declaring intent to form district; Notice to owners. After having considered the City Engineer's report, if the council desires to undertake the project, it shall by resolution declare its intention to form a local improvement district. The resolution shall:

- A. Direct the City Clerk to cause to be published once each week for two successive weeks, in a newspaper of general circulation in The Dalles, a notice stating;
- (1) The council has declared its intention to form a local improvement district and that the report of the City Engineer is on file in the City Clerk's office, subject to examination; and
 - (2) The estimated total cost of the improvement (less the amount thereof to be borne by the City, if any); and
 - (3) A description of the district to be specially benefitted by the improvement; and
 - (4) The date by which remonstrances may be filed with the City Clerk; and
 - (5) The project will be suspended for six months if remonstrances are filed by the owners of two-thirds (2/3) of the dollar amount to be assessed against the property which is to be specifically benefitted; and [As amended by Ordinance No. 95-1198, passed by City Council and approved by the Mayor September 11, 1995.]
 - (6) The date when the Engineer's report and any objections thereto will be considered by the council and all interested persons; and
 - (7) The Council intends to characterize the cost as an assessment for a local improvement.
- B. Direct the City Clerk to send a notice by mail to the last known address for each owner for the various lots, tracts or parcels of property within the improvement district, which notice shall state:
- (1) The estimated total cost of the improvement (less the amount thereof to be borne by the City, if any),
 - (2) A brief description of the property owned by the person to whom the notice is sent,
 - (3) The time within which remonstrances may be filed,

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- (4) The date when the report of the Engineer and any objections thereto will be heard by the council and all interested persons;
 - (5) An estimate of the proposed assessment;
 - (6) A brief description of the methods by which the owner may pay for the assessment, if the assessment is actually imposed on the property;
and
 - (7) The Council's intention to characterize the cost as an assessment for a local improvement.
- C. Under the charter and for the purpose of this ordinance, an "owner" entitled to remonstrate against a proposed improvement shall be the record holder of the title to the land, or a purchaser in possession of the land under a land sale contract. Provided further, that such a contract must be recorded in Wasco County, Oregon, or if not, the purchaser must attach to his remonstrance a duly certified or photostatic copy of his land sale contract, or a verified statement from the record holder of legal title that such a contract exists and that the purchaser is in possession thereunder. For the purpose of the notice described in Section B hereof the "owner" shall be the record holder of legal title unless a land sale contract or memorandum thereof is of record showing the name of purchaser.

Section 5. Improvement Assessment Procedure.

- A. Resolution declaring intent to proceed. Remonstrances shall be in written form, and must be received by the deadline set forth in the Notice of Intent to Form. The Council shall consider any remonstrances filed and objections made to the City Engineer's report. If the Council finds that the project has not been defeated by remonstrances, and that the City Engineer's report is reasonable and just, the Council may by resolution adopt the report and declare its intention to proceed with the improvement. The Council may require a supplementary report from the City Engineer, or it may amend the report prior to adoption.

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- B. Contract Bidding Procedures. After the Council has declared its intention to proceed with the local improvement, it may direct the City Engineer to prepare plans and specifications, and call for bids to let out the work on contract. The Council may provide that the work shall be done by City forces. Contracts issued for work on the local improvement project shall comply with the rules and regulations for competitive bidding adopted by the City Council, acting as the local contract review board, and with the provisions of the Oregon Revised Statutes concerning public contracts.
- C. Review of Engineer's Final Report. When the cost of the local improvement district has been determined, after the work is done, the council shall decide whether the property benefitted shall bear all or a portion of the cost. The City Engineer shall prepare the assessment to the respective lots within the assessment district and file it in the City Clerk's office. Notice of such assessments shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of assessment proposed on that property and shall fix the deadline for filing objections with the Clerk. The grounds for objection shall be stated in the objection filed with the Clerk. The council shall consider such objections and may adopt, correct, modify or revise the assessments and shall determine the amount of the final assessment to charge 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.

Section 6. Special conditions requiring alternative financing procedures. When in the opinion of the council, on account of topographical or physical conditions, unusual or excessive public travel, or other character of the work involved, or when the council otherwise believes the situation warrants it, it may contribute what it deems a fair proportion of the cost of such improvement from funds of the City, and the amount to be assessed to the property benefitted shall be proportionately reduced. Nothing herein contained shall preclude the council from using other available means of financing improvements, including federal or state grants-in-aid, sewer service or other types of service charges, revenue bonds, general obligation bonds, provided that such means of financing comply with the provisions of Article XI, Section 11b of the Oregon Constitution.

Section 7. Appeals. Any person who feels aggrieved by any assessment imposed under the provisions of this ordinance, may within 20 days from the date of passage of the ordinance levying the assessment, file an appeal with the circuit court of the State of Oregon for Wasco County. Such appeal and the requirements and formalities thereof, shall be heard, governed and determined and the judgment thereon rendered and enforced so far as is practical in the manner provided for appeals from reassessments contained in the Oregon Revised Statutes.

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Section 8. Assessment records - Liens. The assessment ordinance shall direct the City Clerk to enter in the docket of City liens a statement of the respective amounts assessed upon each particular lot, tract or parcel of land within the improvement district, together with the name and address of the record owner thereof. The docket of City liens is a public writing and the original and certified copies of any matter authorized to be entered in the docket are entitled to the force and effect of a public writing. From the date of entry of any assessment upon any lot, tract or parcel of land or part thereof, the sum so entered shall be deemed to be an assessment levied and a lien upon the property, which lien shall have priority over all other liens or encumbrances on the property insofar as the laws of the State of Oregon allow.

Section 9. Assessment collection procedure. The sum of money assessed for any improvement as provided in this ordinance shall not be collected until by order of the council not less than ten (10) days' notice is given by the City Clerk by publication in a newspaper of general circulation published in the City of The Dalles, Oregon, of the collection of the assessment. Publication of said notice in one issue of said newspaper shall be sufficient, and such notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed, and the final assessment for each lot. The notice shall also state that such assessment must be paid within 20 days from the date of first publication of the notice, or bonded within 20 days from the date of first publication of the notice, as provided in the Bancroft Bonding Act. At the time of publication of the notice, the City Clerk shall cause to be mailed to the owner of each lot or tract of land assessed, at his/her last known address, a notice setting forth the substance of the notice of collection of assessment, and including specifically the particular lot or tract of land owned by the person to whom notice is sent, and the amount of the assessment. Assessments which are not paid or bonded within the time stated shall bear interest at ten percent (10%) per annum beginning with the last day on which assessment is required to be paid. The owner to whom the notice is mailed as required by this section shall be the "owner" as defined in Section 4 C of this ordinance.

Section 10. Assessment - Ascertainment of owner. For the purpose of ascertaining who is the owner of any lot, tract, or parcel of land or part thereof assessed for the improvements herein described, the City Clerk may take the certificate of any abstractor, abstract company or person or persons engaged in the searching or examination of titles, who may be designated by the council for said purpose, which certificate shall state who is the record owner or contract purchaser of record for each such lot, parcel, or tract of land or part thereof subject to said assessment on the date the council declared its intention to proceed with the improvement, as shown by the records in the office of the County Clerk of Wasco County, Oregon.

Section 11. Assessment deficit - Notice - Collection. If the proposed assessment has been made on the basis of estimated cost, and upon completion of the work the cost is found to be greater than the estimated cost, the council may, by resolution, make a deficit assessment for the additional cost. The City Clerk shall send notice thereof by mail to the last known address of any affected property owner, at least ten (10) days prior to hearing, setting forth a hearing date and place where objections may be made. The council shall make a just and equitable deficit

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assessment by ordinance, and such deficit assessment shall be consolidated with the initial assessment in the lien docket. Such deficit assessment shall be collected in the same manner as the original assessment.

Section 12. Assessment rebate credit - Method of payment. If, upon the completion of a project, it is found that any sum, which has been assessed upon any property, is more than sufficient to pay the cost of the improvement, the council must ascertain and declare the same by ordinance. The excess sum must be entered in the docket of City liens as a credit upon the appropriate assessment. If any such assessment has been paid, the person who paid the same, or his legal representative, shall be entitled to the payment of the portion of the rebate credit which exceeds the cost of the improvement.

Section 13. Bancroft Bonding provisions.

- A. The provisions of the Bancroft Bonding Act set forth in Chapter 223 of the Oregon Revised Statutes, except as modified by the provisions of this section, shall apply to assessments for local improvements.
- B. The provisions relating to rebonding procedures, as set forth in the Oregon Revised Statutes, are hereby adopted by reference.
- C. An owner may submit an application to pay the final assessment in installments over a period of not less than ten (10) years. The application shall provide that the applicant agrees to pay interest at the rate of ten percent (10%) per annum on all unpaid assessments, together with an amount determined by the Council to be sufficient to pay a proportionate part of the cost of administering the bond assessment program including, but not limited to, legal, printing and consultant's fees. The first payment shall be due and payable at the expiration of six months from the date of assessment in the bond lien docket. The next payment shall be due and payable within six (6) months of the due date of the first payment. Payments shall be made on a semi-annual basis thereafter.
- D. An owner shall have the option to file a written election with the Council to have the final assessment payable over a period of less than ten (10) years. The written election shall:
 - (1) Be signed by the owner or a duly authorized representative thereof;
 - (2) Contain a description of the assessed property and the local improvement for which such assessment is made; and

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- (3) Contain a statement that the owner acknowledges that the Oregon Constitution provides that such assessments may be levied over a period of not less than ten (10) years, and that the owner irrevocably waives such right arising under the Oregon Constitution to have such assessment levied over a period of not less than ten (10) years.
- E. Upon receipt of a written election, the Council shall determine, by resolution, the period of years over which the assessment may be paid. The election shall be recorded in the bond lien docket for the local improvement to which such assessment relates. From and after the time at which such election is recorded, it shall be valid and binding upon all subsequent owners of the property or any part thereof.

Section 14. Authority to abandon and rescind improvement proceedings - Refunds. The council shall have full power and authority to abandon and rescind proceedings for improvements hereunder at any time prior to the final consummation of such proceedings, and if liens have been assessed upon any property under this procedure, they shall be canceled, and any payments made thereon shall be refunded to the payor, his assigns or legal representative.

Section 15. Effect of procedural errors. No improvement assessment shall be invalid by reason of a failure to give, in any report, in the proposed assessment, in the ordinance making the assessment, in the lien docket or elsewhere in the proceedings, the name of the owner of any lot, tract or parcel of land or part thereof, or by mistake in the name of any such person or the entry of a name other than the name of such owner, or by reason of any error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps hereinabove specified, unless it appears that the assessment as made, insofar as it affects the person complaining, is unfair and unjust; and the council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

Section 16. Assessment foreclosure procedures. The City may proceed to foreclose as delinquent any lien for assessments made hereunder or made under previous ordinances and charter provisions of the City of The Dalles, in the manner and at the time provided in ORS 223.505 to 223.595, as now or hereafter amended. In supplementation of this law, the City Clerk is hereby designated as the person required to prepare the delinquent list as provided in ORS 223.515, and the City Treasurer is hereby designated as the officer responsible for collection of the unpaid liens or assessments named in the list, and the Mayor and City Clerk are hereby designated as the persons who shall execute to the purchaser a deed of conveyance, as described in ORS 223.570.

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Section 17. Reassessments. Whenever all or part of any assessment for improvements was or is declared void or set aside for any reason or its enforcement refused by any court by reason of jurisdictional or other defects in procedure, whether directly or by virtue of any court decision or when the council is in doubt as to the validity of all or part of any such assessment by reason of such defects in procedure, the council may by ordinance make a new assessment or reassessment with respect to all or part of the original assessment upon the lots which have been benefitted by all or part of the improvement to the extent of their respective and proportionate shares of the full value of such benefit. Such reassessment shall be made in accordance with the provisions set forth in the Oregon Revised Statutes.

Section 17(A). Reapportionment of Assessments. Property held in single ownership at the time of adoption of a resolution declaring the intent to form a local improvement district, need not be divided by the City for the purpose of levying assessments except when the City receives actual notice of the division of ownership of such property prior to the adoption of the ordinance spreading the assessments. After an assessment has been levied upon a contiguous parcel of property in single ownership as provided in this ordinance, there shall be no division or reapportionment of the assessment lien except under the following procedure:

- A. The owner of all or any portion of a parcel of contiguous land subject to a single assessment may make application to the City Clerk for a division and reapportionment of the assessment. The application shall contain a legal description of each parcel of land into which the property is proposed to be divided, together with the name and address of each of the owners and any other party having an interest in such property.
- B. After the receipt of the application, the City Clerk shall mail a notice to each owner and party having an interest in the property. The notice shall set forth the date and time of the meeting of the City Council when the matter shall be considered, which meeting shall not be scheduled earlier than ten days from the mailing of the written notice.
- C. Prior to or during the meeting of the City Council at which the application will be considered, the City Engineer shall make a report and recommendation to the Council for the apportioning of the assessment lien between portions of the property to be divided, and describing the effect of such a division upon the City's security.
- D. During the meeting, the applicant and any owner or party having an interest in the property may be heard, and the Council may make a decision at such meeting, or the Council may defer its decision to another meeting to be scheduled within 30 days.

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- E. The City Council shall make no reapportionment of an assessment which will impair the security of the City for the collection of the assessments upon the property, and the Council may impose conditions upon such reapportionment for the protection of the City.
- F. A reapportionment of an assessment shall become effective only after the adoption of an ordinance declaring such reapportionment and providing for the amendment of the City lien docket to conform with the ordinance. [Section 17A added by Ordinance 94-1192, passed by the Council and approved by the Mayor August 22, 1994.]

Section 18. Cancellation of proceedings and rebate of liens. In the event any improvement project is not defeated by remonstrance, and the council determines to proceed with the work after the hearing, a contract for the doing of the work shall be let, or the work shall be commenced within one (1) year from the date of the hearing except as provided in this section. In the event the contract is not let or the work commenced within one (1) year from the date of the hearing, the proceedings to establish the local improvement district shall be of no force and effect, and any liens docketed or assessments collected shall be canceled and rebated. If any litigation, including eminent domain proceedings, is initiated concerning the formation of a local improvement district, the one (1) year period shall not commence until the litigation has been finally resolved. Where the council determines, in its best judgment, that it would be advisable to postpone commencement of a portion or portions of the work for a time past the 12 month period herein provided, in order to achieve a more orderly development of the project, it may so declare in its resolution of intention to proceed with the improvement. The council shall review the project on a periodic basis. Assessments for the portion or portions of the work to be done at a later date may be held in abeyance by the council until the council determines to proceed with the remaining portion or portions of the work. A record of the estimated proposed assessments so held in abeyance shall be recorded in the Deed Records of Wasco County so as to provide notice to all interested persons that the property to be benefitted by completion of the project is subject to further assessment.

Section 19. Purchase of Non-Remonstrance Agreements. A property owner, or property owners, who has or have previously signed a waiver of remonstrance agreement to participate in a local improvement district to construct a public improvement which specifically benefits their property, where a local improvement district has not yet been established, shall have the right to purchase their interest in the waiver of remonstrance agreement by paying an amount to the City for the value of the improvement(s) that would otherwise have been constructed under the local improvement district. The amount to be paid shall be calculated by the City on a frontage foot basis. The amount paid to the City to purchase the interest in the waiver of remonstrance agreement shall be deposited into a fund which the City maintains for the construction of local public improvements. Upon payment of such a sum, the waiver of remonstrance agreement shall

be considered to be cancelled and null and void. For waivers of remonstrance agreements recorded with the County Clerk, the City shall record an appropriate document indicating the waiver of remonstrance agreement has been terminated and is no longer in full force and effect. [Section added by Ordinance No. 07-1277, adopted by City Council February 12, 2007.]

Section 20. Repeal. Ordinance No. 658 passed October 5, 1949, and approved October 6, 1949, as amended, and Ordinance No. 840, as amended, are repealed. [Section renumbered by Ordinance No. 07-1277, adopted by City Council February 12, 2007.]

Section 21. Emergency clause. Inasmuch as it is the duty of the council to provide by ordinance the procedure for making local improvements and there is pending for immediate consideration of the council several requests for local improvements, and it is the duty of the council to maintain the public health and safety, now, therefore, an emergency is declared to exist and this ordinance shall go into full force and effect immediately upon its passage and approval. [Section renumbered by Ordinance No. 07-1277, adopted by City Council February 12, 2007.]

Passed by the Council and approved by the Mayor June 6, 1991.