

ORDINANCE NO. 1580

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, PROVIDING FOR THE ASSESSMENT OF COSTS FOR LOCAL IMPROVEMENTS AND REPEALING ORDINANCE NO. 1270.

WHEREAS, the City Council of the City of Milwaukie empowers the City Council to provide a procedure for making public improvements and assessing the cost of local improvements by ordinance, therefore,

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, unless the context requires otherwise:

"Local Improvements" means:

1. The grading, graveling, paving or other surfacing of any street, or opening, laying out, widening, extending, altering, changing the grade 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 mentioned in this section.
6. The construction, reconstruction or repair of any sanitary or storm sewer or water main.
7. The acquisition, establishment, construction or reconstruction of any off-street motor vehicles parking facility.
8. The construction, reconstruction, installation and equipping of a neighborhood recreation facility.
9. Any other local improvement for which an assessment may be made on the property specially benefitted.

"Council" means City Council of the City of Milwaukie, Oregon.

"Costs" means the total cost of making and financing the improvement including, but not limited to, design, construction, materials, equipment, administration, supervision, inspection, property acquisition, advertising, interest, legal, financial and any other costs or expenses attributable to the improvement.

"Finance Director" means the Finance Director for the City of Milwaukie, Oregon.

"Public Works Director" means the Public Works Director for the City of Milwaukie, Oregon

"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 Clackamas County Assessor.

"Lot" means lot, block or parcel of land.

Section 2. Initiating a Local Improvement District.

- A. Council Initiation. The Council of the City of Milwaukie may on its own motion initiate proceedings for the creation of any local improvement district.
- B. Petition of Property Owners. A majority (60%) of the owners of real property which will be benefitted by the proposed local improvement district may petition for the creation of a local improvement district.

Section 3. Resolution of Intent to Make Improvement. Upon its own motion or upon receipt of a petition under Section 2, the Council shall cause a report to be prepared containing:

- A. A plat or map showing the general nature, location and extent of the proposed improvement and the lands to be assessed to pay all or any part of the costs.
- B. Plans, specifications and estimates of the work to be done.
- C. An estimate of the costs of the improvement.
- D. The proposed boundaries of the local improvement district.
- E. 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 costs of the improvement to the property benefitted.
- F. A description of the location and assessed value of each lot, or portion thereof, to be benefitted by the improvement, with the names of the owners.
- G. A statement showing outstanding assessments against the property to be assessed.
- H. Any other information required by the Council, who may direct the Finance Director or other public official to assist the Director of Public Works in obtaining the information required by this section.

If, after receipt of the report, the Council deems it advisable to make the improvement, it shall adopt a resolution of intent to initiate the improvement and direct that notice of a public hearing be given.

Section 4. Hearing Notice.

- A. After adoption of the Resolution of Intent, the Finance Director shall prepare a notice of public hearing containing the following information:
 - 1. Description of the boundaries of the district.
 - 2. The estimated probable cost of the proposed improvement.
 - 3. The proposed method of assessment proposed to be used to arrive at a fair apportionment of the total cost of the improvement against the property benefitted.
 - 4. The date of public hearing when the Council will consider remonstrances to the proposed improvement.
 - 5. That property owners' written remonstrances may be filed at the Office of the Finance Director not later than the scheduled time for the hearing.

- B. Not later than ten days prior to the hearing, the Finance Director shall mail copies of the notice to the last known address of each record owner and of property benefitted by the proposed improvement. If one or more of the property owners is unknown the Finance Director shall publish the notice in a newspaper of general circulation.

Section 5. Hearing on Remonstrances and Ordinance Establishing District.

- A. At the hearing, the Council shall consider property owners' written remonstrances to and oral testimony on the improvement. Any written or oral remonstrances may be withdrawn at any time prior to or during the hearing. If an owner does not remonstrate, the owner shall be deemed to have waived any objections to making the improvement. The Council shall not consider remonstrances filed on behalf of property for which the city has a waiver or remonstrance on file. Oral or written remonstrances by the owners of two-thirds of the property to be assessed for the proposed improvement shall suspend action regarding the improvement for six months, unless such public improvement is for sidewalks, or an emergency regarding the necessity for such improvement exists and is so declared by the Council.
- B. If the Council determines to alter the boundardies of the district, it shall direct that another hearing be held and additional notice provided.
- C. If the City Council, after considering any remonstrances, finds that the improvement is for sidewalks, there are insufficient remonstrances, or an emergency exists, it shall authorize the improvement and establish the local improvment district by ordinance. The ordinance shall include a description of the improvement, how the work will be done, boundaries of the district and appropriate findings showing the improvement is consistent with the comprehensive plan.

Section 6. Manner of Doing Work, Contracts, Bids, Bonds.
The Council may provide for the city to do the work, or it may award the work on contract. In the event the work is done under contract, bids shall be received after advertisement therefor. The contract shall be awarded to the lowest responsible bidder, provided the Council shall have the right to reject any and all bids if it's in the public interest to do so. The Council shall provide for the taking of security by bond for the faithful performance of any contract let under its authority, and the provisions thereof, in case of default, shall be enforced in the name of the City of Milwaukie.

Section 7. Proposed Assessment and Hearing. When the estimated cost has been ascertained on the basis of a contract awarded or city construction cost estimates or after the work has been done and the cost thereof actually determined, the Council shall determine whether the property benefitted shall bear all or a portion of said cost. The Council shall direct the Finance Director or other city official to prepare the proposed assessment to the respective lots benefitted by the improvement. Notice of the proposed assessment

shall be mailed to the owner of each lot to be assessed stating the amount of the proposed assessment on said property, the date of the hearing on the proposed assessment, and a date by which time objections must be filed. The hearing on the proposed assessments may be held at the same time as the hearing required by Section 5, if appropriate notice is given pursuant to this section and Section 4.

Section 8. Assessment Ordinance. The Council shall, after the expiration of the date by which time objections to the proposed assessments shall be filed but not earlier than fourteen days after the notice is mailed or published if one or more property owners are unknown, conduct a hearing to consider such objections and may adopt, correct, modify or revise the proposed assessments and shall thereafter determine the amount of actual assessment to be apportioned against the various lots benefitted by the improvement. The Council shall by ordinance containing appropriate findings spread the assessments upon the property in the manner and amounts so determined. The Council may delay the passage of such an assessment ordinance until the contract for the work is let or the improvement completed and the total cost thereof determined, to avoid deficit assessments or rebates or for any other reason deemed sufficient.

Section 9. Method of Assessment and Alternative Methods of Financing. The Council in adopting a method of assessment of the costs of the improvement may:

- A. Use any just and reasonable method of determining the extent of any 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 benefitted.
- C. Authorize payment by the city of all or any part of the cost of any such improvement when in the opinion of the Council, due to topographical or physical conditions or excessive public travel, or other character of the work involved, or when the Council otherwise believes the situation warrants it, provided the method selected creates a reasonable relation between the benefits derived by the property assessed and the benefits derived by the city as a whole.

This section shall not preclude the Council from using other available means of financing public improvements including, but not limited to, federal or state grants-in-aid, sewer service or other types of service charges, revenue bonds, general obligation bonds, or other legal means of finance. In the event any of such other means of finance are used, the Council may, in its discretion, levy special assessments hereunder according to benefits received to cover any part of the costs of the improvement not covered by such other means.

Section 10. Appeal. A property owner may appeal any assessment made under this ordinance according to the procedure provided by Oregon law.

Section 11. Lien Recording, Interest, Foreclosure.

- A. After the ordinance levying assessments has been passed, the Finance Director shall enter in the Docket of City Liens a statement of the respective amounts assessed upon each particular lot, against which the same are placed. Such liens shall be first and prior to all other liens or encumbrances thereon whatsoever insofar as the laws of the State of Oregon allow.
- B. Interest shall be charged at a percentage rate per annum fixed by resolution of the City Council on all amounts not so paid within thirty days from the date of such entry, or entry corrected pursuant to Section 14 herein. The city may proceed to foreclose or enforce any lien for an assessment which is delinquent according to the requirements of Oregon law.
- C. Nothing in this section shall preclude the City of Milwaukie from recording said lien on the property in the county in which the property is located.

Section 12. Notice of Assessment, Bonding. Within ten (10) days after the ordinance levying assessments has been passed, the Finance Director shall send a notice of assessment by mail to the record owner at his last known address, of each lot assessed. This notice shall state the time within which such assessments must be paid or bonded and that assessments which are not paid or bonded within the time stated in the notice shall bear interest at the percentage rate per annum fixed by the City Council in accordance with Section 11 above, and that the property so assessed is subject to foreclosure if such assessments are not paid or bonded within the time stated in the notice. The notice shall also include information on deferral of assessments under ORS 311.702-311.735. The owner may make application to bond such assessment pursuant to the provisions of ORS 223.205 to 223.295.

Section 13. Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the Finance Director prior to any payment on account thereof. The Finance Director shall determine whether there is an error in fact and if he shall find that there is an error in fact, he shall recommend to the Council an amendment to the assessment ordinance to correct the error. Upon the enactment of such an amendment or corrected ordinance by the Council, the Finance Director shall make the necessary correction in the Docket of City Liens and send by mail to the last known address of the owner a corrected notice of the assessment.

Section 14. Deficit Assessment. If assessment is made before the total cost of the improvement is known and it is found that the amount assessed is insufficient to defray the expense of the improvement, the Council may by resolution declare such deficit and prepare a proposed deficit assessment. The Council shall set a time for a hearing of objections to such deficit assessment and shall direct the Finance Director to provide notice thereof in the manner set forth in Section 7. The Council upon such hearing shall make a just and equitable deficiency assessment by ordinance. Such deficit assessment shall be consolidated with the assessment in the lien docket in accordance with the provisions of Section 12 herein. Thereafter, the provisions of Section 12 and 13 herein shall be applicable with regard to such deficit assessment.

Section 15. Rebate. If after any assessments are made and the improvement is not done, or upon the completion of the project it is found that any sum theretofore assessed therefor upon any property is more than sufficient to pay the cost thereof, the Council must ascertain and declare the same by ordinance and when so declared, there must be entered in the Docket of City Liens 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 any portion of the rebate credit which exceeds the assessment or costs to the City by a check on the City of Milwaukie.

Section 16. Reassessment. Whenever an assessment, deficit assessment or reassessment for any improvement which has been or may be hereafter made by the city has been or shall be hereafter set aside, annulled, declared or rendered void, or its enforcement refuted by any court of this state or any federal court having jurisdiction thereof, whether directly or by virtue of any decision of such court, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment or any part thereof, the Council may make a new assessment or reassessment. Such reassessment shall be made in the manner provided by ORS 223.405-223.485.

Section 17. Segregation of Assessments. When any lot subject to an outstanding assessment is partitioned or subdivided, and the city receives a request to reapportion the assessment, the Finance Department shall apportion the outstanding amount to the new lots according to the formula used in the original assessment. The Finance Director shall charge a fee for this service as established by resolution of the City Council.

Section 18. Curative Provisions.

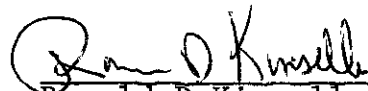
- A. No improvement assessment shall be held invalid by reason of a failure to give, in any report, in the proposed assessment, in the assessment ordinance or ordinances, in the lien docket or elsewhere in the proceedings, the name of the owner of any lot, or part thereof or the name of any person having a lien upon or interest in such property, or by reason of any error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps made, insofar as it affects the person complaining, is unfair and unjust, and the Council shall have power and authority to remedy and correct such matters by suitable action and proceedings.
- B. If any article, section, subsection, subdivision, phrase, clause, sentence or word in this ordinance shall for any reason whatsoever be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of this ordinance but shall be confined to the article, section, subsection, subdivision, clause, sentence, phrase or word so held invalid or unconstitutional.

Section 19. Repealer. Ordinance No. 1270 together with all amendments is repealed.

Read the first time this 3RD day of SEPTEMBER, 1985, and moved to second reading by unanimous vote of the City Council.

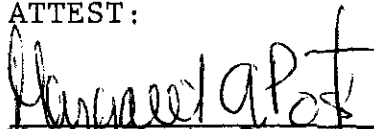
Read the second time and adopted by the City Council this 3RD day of SEPTEMBER, 1985.

Signed by the Mayor this 3RD day of SEPTEMBER, 1985.



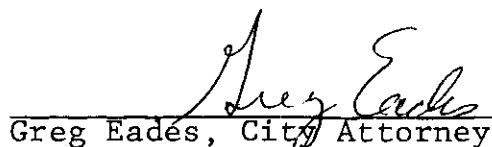
Ronald D. Kinsella, Mayor

ATTEST:



Margaret A. Post, Finance Director

Approved as to form:



Greg Eades, City Attorney