

ORDINANCE NO. 92-O-486

AN ORDINANCE PROVIDING FOR PUBLIC IMPROVEMENTS, LEVYING AND COLLECTING SPECIAL ASSESSMENTS, AND FOR THE CREATION AND ENFORCEMENT OF ASSESSMENT LIENS; AND REPEALING ORDINANCE NO. 60-0-146. [Effective July 7, 1992]

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The City of Brookings ordains as follows:

Section 1. Definitions. For the purposes of this Ordinance, the following definitions shall apply:

A. Improvement - The acquisition, alteration, change in the grade of, construction, establishment, installation, laying out, opening, reconstructing, repair or widening of any street, alley, avenue, sewer, drain, water main, sidewalk, curb, gutter, off-street motor vehicle parking facility, or the performance of any other public work for which an assessment may be made on the property benefitted.

Section 2. Initiating an Improvement. Whenever the City Council considers it necessary to make an improvement to be paid for in whole or in part by

special assessment against property according to the benefits conferred, or when the owners of one-half of the property to benefit specially from the improvement, by written petition request the City Council to make an improvement, the City Council shall, by motion, direct the City Manager or his designee to prepare a written report for presentation to the City Council. Unless the City Council otherwise directs, the report shall contain the following:

A. A map or plat showing the general nature, location and extent of the improvement and the land to be assessed for the payment of any part of the cost.

B. A general statement of specifications and estimates of the work to be completed.

C. An estimate of costs of the improvement, including legal, administrative, advertising and engineering costs.

D. An estimate of the cost of the improvement to the property benefitted.

E. A recommendation of 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 property benefitted.

F. The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefitted by the improvement, with the name or names of the owners thereof as shown on the latest assessment roll from the offices of the Curry County Assessor.

G. A statement of any unpaid City liens against the property to be assessed.

H. A description of all property or property interests which must be acquired to make the improvement and estimates of the costs to obtain such property or property interests.

A copy of the completed report shall be filed in the offices of the City Recorder and available for public inspection.

Section 3. Action on Report for Improvement. Upon the presentation of the report to the City Council, the Council may approve the report, modify it in any manner or require the presentation of additional information about the improvement, or determine to abandon the improvement project.

Section 4. Resolution of Intent to Create Improvement District. Upon the approval of the report for an improvement, or upon the approval of a modified report by the City Council, the City Council shall declare by resolution its intention to make the improvement, provide the manner and method for carrying out the improvement and give notice of its intention to make the improvement as follows:

A. The notice shall be published at least once each calendar week for two calendar weeks prior to the date of the hearing before the City Council; and a copy of the notice shall be mailed to the address of each record owner of property subject to a proposed assessment, at the address of the property owner shown by the latest assessment roll in the offices of the Curry County Assessor.

B. The notice to be published and mailed shall contain the following information:

1. In general terms, the kind of improvement proposed to be made.
2. A statement that the report for the improvement is on file in the office of the City Recorder and available for public inspection.
3. The boundaries of the proposed assessment district, or a general description of the property to be benefitted by the improvement.
4. An estimate of the total cost of the improvement.
5. An estimate of the cost of the improvement to be assessed against the property to be benefitted.
6. Notice of a specific date, time and place where the City Council will hold a public hearing, at which public hearing objections and remonstrances to the improvement will be heard. The date and time of the public hearing shall not be earlier than ten days after the date of the first publication or mailing of notice, whichever is later.
7. A statement to all interested persons that written objections or remonstrances to the report and proposed assessment must be submitted to the City Recorder on or before the date and time specified in the notice for the public hearing.

Section 5.            Manner of Completing Improvement. The City Council may provide in its resolution of intent to create an improvement district that the construction work for the improvement may be done in whole or in part by the City, by a contract, by any other governmental agency, or by any combination of methods acceptable to the City Council.

Section 6.            Public Hearing. The City Council shall, at the time specified in the notice, hear all objections and remonstrances made by persons affected by the improvement. The City Council may continue the public meeting for a period not to exceed 60 days after the date set in the notice. In the event of the City's receipt of written

objections or remonstrances by persons owning fifty-one percent (51%) of the front footage of property subject to the assessment when the proposal is to levy or collect such assessment against only the property abutting upon such public improvement, or by remonstrance of persons owning fifty-one percent (51%) of the area within the boundaries of the proposed improvement district in all other instances, the City Council shall by motion abandon the establishment of the proposed improvement district and shall not re-initiate its establishment for six months thereafter.

In the event the Council determines to proceed with the improvement, the Council shall determine, by resolution, the extent of the proposed improvement district, the nature of the project and an estimate of the time within which it shall be completed.

Section 7.                    Completion of Improvement.

A. If all or part of the improvement is to be constructed by a contractor, the Council shall direct the City Manager to prepare the City's advertisement for bids for construction in a manner specified by the Council.

B. No solicitation for bids on the improvement project shall be made until the Council has determined by resolution that the improvement shall be made as provided in Section 6 of this Ordinance.

C. A contract for the improvement, or any part of it, shall be awarded in accordance with the City's previously adopted procedures for public contracting.

D. The City may reject any or all bids when they are considered unreasonable or unsatisfactory.

E. If no bids are received, or if the bids received are rejected, the Council may call for other bids or change the manner in which the improvement is to be constructed.

Section 8.                    Apportionment of Costs.

A. After the adoption by the City Council of the resolution determining the improvement, or some part of it, shall be made, the City Manager shall determine, as nearly as possible, the cost of the improvement and shall report the cost to the City Council. The City Council shall, by ordinance, assess the various lots, parcels of land, or portions specifically benefitted by the improvement with its share of the cost of the improvement, or in an amount the Council determines is appropriate. The Council, in adopting a method of assessment of the costs of the improvement, may:

1. Use any just and reasonable method of determining the extent of the improvement district consistent with the benefits derived;

2. Use any just and reasonable method of apportioning the sum to be assessed among the properties benefitted; and
3. Authorize payment by the City of all or part of the costs of the improvement when, in the opinion of the Council, the circumstances or nature of the work involved warrant only a partial payment of the costs of the improvement by the property benefitted. The portion to be paid by the City shall represent a reasonable relation between the benefits derived by the properties specially assessed and the benefits derived by the City as a whole.

B. Nothing in the provisions of this ordinance precludes the City Council from using other available means of financing improvements, including, but not limited to, federal or state grants, sewer, water or other utility charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. If other means of financing improvements are used, the Council may levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

Section 9.                    Assessment Procedure.

A. When the estimated cost of an authorized local improvement has been ascertained on a basis acceptable to the City Council, or after the work has been completed and the actual cost has been determined, the City Council shall direct the preparation of a proposed assessment to the property specially benefitted within the local improvement district, which proposed assessment shall be filed in the offices of the City Recorder of the City of Brookings. The proposed assessment may be in the form of a proposed resolution.

B. Upon receipt of the proposed assessment, the Council shall, after any modifications, adopt a resolution directing notice of the proposed assessment to be mailed or delivered to the owners of property proposed to be assessed, at the addresses shown on the latest assessment roll in the offices of the Curry County Assessor. The notice shall contain the following information:

1. The name of the owner, or reputed owner, the description of the property assessed, the total estimated or actual project cost assessed against the described property;
2. The date, time and place where written objections to the proposed assessment will be considered including a statement that the written objections must be received on or before the time scheduled for the public hearing at which the City Council will hear any objections; and

3. A statement that the proposed assessment, as it may be modified by the Council, will be levied by the Council after the public hearing and will thereafter be charged against the property and will be immediately payable in full, or in installments, if applicable.

C. The City Council shall hold a public hearing on the proposed assessment to consider written objections and may adopt, correct, modify or revise the proposed assessments. The public hearing shall be held not sooner than ten days after the date of mailing of the notice specified in Section 9.B. The Council shall determine by Ordinance the amount of assessment to be charged against each lot in the improvement district according to the special and peculiar benefits accruing from the improvement, and shall thereby levy the assessments.

Section 10.            Notice of Assessment.

A. Within 30 days after the adoption of the assessment ordinance, the City Recorder shall mail a notice of the assessment to the owner or owners of the assessed property as shown on the latest assessment roll in the offices of the Curry County Assessor. The City Recorder shall cause to be published a notice of the assessment twice in a newspaper of general circulation within the City of Brookings. The first publication shall be made not later than 10 days after the date the assessment ordinance becomes effective.

B. The notice of assessment shall recite the date the assessment ordinance became effective and state that if the owner of the property fails to make written application to pay the assessment in installments within ten days from the date of the first publication of the notice, or if the owner fails to pay the assessment in full within 30 days from the date the assessment ordinance became effective, interest will begin to run on the assessment and the property assessed will be subject to foreclosure.

C. The notice shall contain a description of the property assessed, the name of the owner or owners of the property and the amount of each assessment.

Section 11.            Installment Payments.

A. The owner of property assessed for an improvement in the sum of \$100 or more may make written application to the City Manager to pay the assessment in installments. The application shall be made within ten days from the date of first publication of the notice of assessment, unless such time is extended by the assessment ordinance. The application for installment payments shall be approved if:

1. The amount remaining unpaid on the assessment with any unpaid balance of any previous assessments against the same property for improvements does not exceed double the assessed valuation of the property, as shown by the last county tax roll, and

2. The installment payment period does not exceed ten years or the period established by the assessment Ordinance.

B. If the assessed valuation of the property, as shown by the last county tax roll, is insufficient to permit installment payments, the Council, by motion, may authorize payments in any manner it determines to be fair and reasonable.

Section 12.                    Liens Records and Foreclosure Proceedings.

A. After the adoption of the assessment ordinance, the City Recorder shall enter in the lien docket a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, a description of the improvement, the names of the owner or owners, and the date the assessment ordinance became effective. The amount entered in the lien docket shall become a lien and charge upon the particular lot, parcel of land, or

portion thereof assessed for the improvement as of the date the assessment ordinance became effective.

B. Interest at a rate not to exceed 2 percentage points more than the net effective rate of interest paid by the City on improvement bonds sold in connection with financing the improvements project out of which the assessment arose, or if no improvement bonds are sold, then interest at a rate the Council may set in the assessment ordinance, or if no rate is set in the ordinance, then at a rate of nine percent (9%) per annum shall be charged on the balance of the assessment that is unpaid after 30 days from the date the assessment ordinance became effective.

C. In addition to the provisions of this ordinance, the City may use any method authorized by law to enforce collections of delinquent assessment liens. The assessment liens shall be considered delinquent if not paid or placed on an installment basis within 30 days after the entry on the lien docket. The City may become a bidder for the property being offered at a foreclosure sale.

D. If the owner of property neglects or refuses to pay an installment within one year of the date due, the Council may adopt a resolution declaring the whole sum, both principal and interest owing on the assessment, due and payable at once. The Council may then proceed to collect the assessment or any part of it. The provisions of ORS 223.205 to ORS 223.295 are hereby adopted and made a part hereof by this reference.

Section 13.                    Errors in Assessment Calculations. Claimed errors in the calculation of assessments may be reported to the City Recorder, who shall determine whether there has or has not been an error in fact. If the City Recorder finds that there has been an error in fact, he/she shall recommend to the Council an amendment to the

assessment ordinance to correct the error, and, upon enactment of such amendment, the City Recorder shall make the necessary correct in the lien docket and send the corrected notice of assessment by registered or certified mail to the then current owner of record of the real property at the address shown on the latest assessment roll in the offices of the Curry County Assessor. If the City Recorder finds there has been no error in fact, he/she shall reject the claim.

Section 14.            Deficit Assessment.

A. If an assessment is made before the total cost of the improvement is ascertained and if the amount of the assessment is insufficient to pay the costs of the

improvement, the Council, by motion, may declare the deficit and prepare a proposed deficit assessment. The Council shall set a time for hearing objections to the deficit assessment and direct the publication of one notice of the hearing in a newspaper of general circulation in the City and mail a copy of the notice to the address of each record owner of property subject to the proposed deficit assessment, at the address of the property owner shown by the latest assessment roll in the offices of the Curry County Assessor. The hearing on the proposed deficit assessment shall be held no earlier than seven days after the date of mailing, or publication, whichever is later.

B. After the hearing, the City Council, by Ordinance, shall make a just and equitable deficit assessment which shall be entered in the lien docket as provided by this Ordinance. Notices of the deficit assessment shall be published and mailed and the collection of the assessment shall be made in accordance with the procedure established for making the initial assessment.

Section 15.            Rebates. If, upon completion of the improvement, the assessment previously levied on the property is more than sufficient to pay the costs of the improvement, the Council shall ascertain and declare the excess by Ordinance and, when so declared, the excess amount shall be entered on the lien docket as a credit upon the appropriate assessment. If the assessment has been paid, the person who paid, or his legal representative, is entitled to repayment of the rebate credit, or the portion which exceeds the amount unpaid on the original assessment.

Section 16.            Transfers. When a deficit or surplus exists after completion of collection of all liens and payment of all liabilities involving an individual assessment roll, the Council shall authorize the payment of any deficit from the general fund and shall authorize the transfer of any surplus to the general fund.

Section 17.            Abandonment of Proceedings. The City Council may abandon and rescind proceedings for an improvement at any time before the completion of the improvement. If liens have been assessed on any property under this procedure, they shall be cancelled, and payments made on the assessment shall be refunded to the persons paying them, their assigns, or legal representatives.

Section 18.            Curative Provisions.

A. No improvement assessment is rendered invalid because of the failure of a report to contain all the information required by Section 2 hereof, or because of an omission or deficit in the improvement resolution, the assessment ordinance, the lien docket, or notices published and mailed, nor by the failure to list the name of, or mail notice to, the owner of any property as required by this Ordinance, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdiction, or otherwise, in any of the proceedings or steps, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining. The Council may remedy and correct all assessments determined by it to be unfair or unjust by suitable action or proceedings.

B. No improvement or improvement district which has been commenced or formed under the provisions of a prior Ordinance shall be rendered invalid by the repeal of such prior Ordinance and the enactment of this Ordinance. Such prior improvements and improvement districts are hereby validated and any further actions or proceedings thereon which are necessary for the completion of the improvement or the formation of the improvement district shall be made under the provisions of this Ordinance which are appropriate in recognition of the stage of completion of the earlier improvement. The provisions of this Ordinance shall be applied and interpreted so as to relate to existing improvement projects promulgated under Ordinance No. 60-0-146, repealed hereby.

Section 19.            Reassessment. When an assessment, deficit assessment or reassessment for an improvement which has been made by the City is set aside, annulled or rendered void, or its enforcement restrained by a court of competent jurisdiction, or when the Council doubts the validity of the assessment, deficit assessment or reassessment, or any part thereof, the Council may make a reassessment in the manner provided by state law and the provisions of this Ordinance.

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

Section 21.            Repeal of Ordinance 60-0-146. Ordinance No. 60-0-146 enacted May 10, 1960, is hereby repealed.

Effective July 7, 1992