

ORDINANCE NO. 70

AN ORDINANCE PRESCRIBING THE METHODS AND PROCEDURES FOR MAKING PUBLIC IMPROVEMENTS IN THE CITY OF WILSONVILLE, FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS THEREFOR, AND FOR THE CREATION AND ENFORCEMENT OF ASSESSMENT LIENS, AND REPEALING ORDINANCE NO. 30.

THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1: Initiation of Proceedings.

A. Whenever the Council shall deem it necessary to make any street, sewer, water, sidewalk, parking, curbing, drain or any other public improvement defined in Oregon Revised Statutes 223.387 to be paid for in whole or in part by special assessment according to benefits conferred, then the Council shall, by Resolution, declare its intention to make said improvement or improvements and direct the City Engineer or engineer retained by the City to make a survey and written report for such improvement and file the same with the City Recorder, containing the information hereinafter specified.

B. Whenever the owners of at least 50 percent of the property to be benefited desire to form themselves into an improvement district for the purpose of accomplishing any of the objectives listed in Paragraph A, they may by written petition request the Council to direct the City Engineer to submit a report as specified in Paragraph A. The Council, if satisfied that the petition is signed by the owners of at least 50 percent of the benefited properties within the district specified in the petition, may pass the requested motion. In the event the request is allowed, no further action shall be taken thereon until the petitioners deposit with the City a cash deposit in such amount as the City's Engineer shall deem reasonably necessary to defray the City's costs of administration, survey, design, preliminary engineering, mapping and any other actions necessary to the processing of the request. Upon payment of the deposit, the Council may then direct the City Engineer to submit a report as specified in Paragraph A. The petition referred to herein must be filed with the Recorder not less than 10 days prior to any regular meeting of the Council.

C. If the Council approves an owners' petition pursuant to Section B and thereafter creates an improvement district, the required cash deposit shall be credited prorata to the owners paying the same and shall be directly applied in satisfaction, in whole or in part, of the resulting final assessment levied against said owners' property with any unused balance to be returned to said owners, prorata and without interest. When no improvement district is created, the cash deposit shall be used to pay those costs actually incurred by the City in processing said petition, and the balance, if any, shall be returned to the owners paying the same, prorata and without interest.

Section 2: Report of the Engineer. The City Engineer or the engineer retained by the City shall file the report with the Recorder within the time specified by the Council. At the discretion of the Council, the time for filing the report may be extended. The report shall contain the following:

A. A map or plat showing the general nature, location and extent of the proposed improvement and the land to be included in the proposed improvement district.

B. Estimated cost of the work to be done, including any legal, administrative and engineering costs attributable thereto; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the Engineer may adopt the estimates of such agency.

C. An analysis of the extent to which the proposed improvement benefits the entire City and a recommendation for the project costs that will be borne by the entire City.

D. The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof.

E. A statement of outstanding assessments against property to be assessed.

Section 3: Action on Engineer's Report. After the Engineer's Report has been filed with the City Recorder, the Council may thereafter by motion approve the report, modify the report and approve it as modified, require the Engineer to supply additional or different information for such improvement, or may abandon the improvement.

Section 4: Resolution and Notice of Hearing. After approving the Engineer's Report as submitted or modified, the Council shall, by Resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement, fix a time for a public hearing thereon and shall direct the Recorder to give notice of such improvement and public hearing by posting at the City Hall and at two places within the benefited area, and by mailing copies of such notice to the owners of the property to be assessed for the costs of such improvement. The notice shall be mailed and posted at least 10 days prior to the public hearing on the proposed improvement. Said notice shall contain the following:

A. A statement explaining the proposed improvement, a description of the boundaries of the district to be assessed, and the intention of the Council to make such an improvement.

B. The place and times at which the Engineer's Report on the proposed improvement may be examined.

C. The date, time and place of the public hearing on the proposed improvement.

D. The procedure for presenting objections and remonstrances.

E. The estimated total cost of the project or the cost of that portion of the project to be financed by assessments to benefited properties.

Section 5: Hearing and Action on Improvement. If, prior to or during the hearing, objections are received from or made by owners representing two-thirds or more of the area to be assessed, the improvement proceedings shall be abandoned and shall not be subject to a further hearing for at least three months. If there are not sufficient objections and remonstrances to require abandonment of

the improvement proceedings, the Council may adopt or amend the Engineer's Report and, as amended, adopt the same by Resolution. Having by Resolution created a local improvement district of the area to be benefited by the proposed improvement, the Council shall direct, in said Resolution or by subsequent action, the City Engineer or an engineer retained by the City to prepare detailed plans, specifications and cost estimates for the proposed improvement.

Section 6: Board of Viewers. Thereafter the Mayor shall appoint three residents of the City of Wilsonville to view such proposed public improvement to determine a method or methods of assessing all property receiving benefits, and to review the application of the recommended method of assessment. At the discretion of the Council, a time shall be set for said Viewers to file with the Council a written report of the method or methods of assessing all property receiving the benefits of said improvement.

Section 7: Advertisement and Contract. The Council shall review the final plans, specifications and cost estimate and finding same to be consistent with preliminary plans and cost estimates adopted in the Engineer's Report, shall by Resolution adopt the final plans and specifications and direct City personnel to construct the proposed improvements or direct the City Recorder to advertise for bids on the project according to the final plans and specifications. The City shall provide for the bonding of all contractors 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 Wilsonville.

If the Council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is fifteen percent or more in excess of the Engineer's estimate, it shall provide for holding a hearing of objections to proceeding with the improvement on the basis of such bid, and it shall direct the City Recorder to publish one (1) notice thereof in a newspaper of general circulation in the City of Wilsonville. Notice shall state the purpose, date, time and place of said hearing. After the hearing the Council shall

determine whether said bid shall be accepted or rejected.

Section 8: Assessment.

A. After the Council by Resolution has created a local improvement district, the Council shall direct the Board of Viewers to determine or review the calculations of the proposed assessments for each property benefited by the improvement. If assessment is to be made prior to construction of the improvement, said cost determination shall be based upon estimates contained in the Engineer's Report and said determination of proposed individual and specified property assessments shall be known as the "Preliminary Preassessment Roll." If assessment is to be made following construction of the improvement, said determination shall be based upon actual construction costs and related costs and said determination of proposed individual and specific property assessments shall be known as the "Preliminary Assessment Roll."

B. The Council shall establish the date, time and place at which a Board of Equalization will meet to equalize and adjust the Preliminary Preassessment Roll or the Preliminary Assessment Roll, and shall direct the City Recorder to mail and post the notice of the proposed assessments and hearing for equalization of said assessments. Notices shall be mailed and posted at least 10 days prior to the hearing.

C. The Council shall sit as the Board of Equalization unless the Council appoints others to serve as a Board of Equalization. The Council shall establish the size of the Board of Equalization and the qualifications for appointment to the Board of Equalization.

D. The notice of preliminary assessment or preliminary pre-assessments shall contain the following:

1. A brief description of the improvement.
2. The place and times at which the Preliminary Pre-assessment Roll or the Preliminary Assessment Roll can be examined.
3. The date, time and place of the hearing on equalization of proposed assessments.

4. The procedure for presenting objections and remonstrances.
5. The individual and specific assessment proposed for the property owned by the recipients of the mailed notices.

Section 9: Hearing on Assessment Equalization. The Board of Equalization shall hear all objections and remonstrances at the designated meeting or, failing to hear all objections and remonstrances within a reasonable period of time, shall adjourn the hearing to a time and place designated prior to adjournment. After hearing all objections and remonstrances, the Board of Equalization shall at the hearing or at subsequent meetings, equalize the proposed assessments and present the revised and equalized assessment or preassessment roll to the Council within 60 days of the initial hearing.

Section 10: Final Assessment.

A. The Council shall, by Resolution, levy, or amend and levy, the assessments or preassessments presented by the Board of Equalization said assessments to be then known as either "Final Assessment Roll" or "Final Preassessment Roll." Promptly after passage of the Resolution levying the final assessments, the Recorder shall send by registered or certified mail, a notice of final assessment to all owners of property being assessed.

- B. The notice of final assessment shall contain the following:
1. A brief description of the improvement.
 2. The procedure for cash payment or for applying for financing.
 3. The final assessment levied on property owned by the recipient.

Section 11: Increase in Equalized Assessment. If the Board of Equalization determines that equalization of assessments requires that one or more preliminary assessments be increased and if the Council concurs, the City Recorder shall by mail notify the property owners affected by the increase in proposed assessment. Said property owners shall be given a hearing before the Board of Equalization no sooner than 10 days from the date the notice is mailed.

Section 12: Method of Assessment. 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 specially benefited.

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 the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment by the benefited property of the costs of the improvement.

Section 13: Alternative Methods of Financing. Nothing contained in this Ordinance shall preclude the Council from using any other available means of financing improvements, including Federal or State grants in aid, revenue bonds, general obligation bonds, Bancroft bonds, or any other legal means of finance. In the event that such other means of financing 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 improvement according to the procedures provided in this Ordinance.

Section 14: Remedies. Subject to the curative provisions of Section 20 and the rights of the City to reassess as provided in Section 21 of this Ordinance, proceedings for Writs of Review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein. A property owner who has filed written objections with the City Recorder prior to the public hearing may have the right to apply for a Writ of Review based upon the City Council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner if the facts supporting such claim

have been specifically set forth in the written objections. A property owner who has filed written objections with the City Recorder prior to the public hearing may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the City; or if notice of the improvement was not sent to the owner and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the City Recorder within 30 days after receiving notice or knowledge of the improvement. No provision of this Section shall be construed so as to lengthen any period of redemption or so as to affect the running of any statute of limitation. Any proceeding on a Writ of Review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the City Council to remedy or cure the alleged errors or defects.

Section 15: Lien Records and Foreclosure Proceedings. After passage of the assessment resolution by the Council, the City Recorder shall enter in the Docket of City Liens 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 resolution. 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 Wilsonville 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 eight percent (8%) per annum until paid on all amounts not paid within 30 days from the date of the assessment Resolution. After expiration of 30 days from the date of such assessment Resolution, provided that the owner has not applied for Bancroft or other City approved financing, 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 fore-

closure 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 16: Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the City Recorder, who shall determine whether there has been an error in fact. If the Recorder shall find that there has been an error in fact, he shall recommend to the Council an amendment to the assessment Resolution to correct such error, and upon enactment of such amendment, the City Recorder shall make the necessary correction in the Docket of City Liens and send a correct notice of assessment by registered or certified mail.

Section 17: Deficit Assessment. In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the Council may by motion 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 City Recorder to publish one (1) notice at least 10 days prior to hearing in a newspaper of general circulation in the City of Wilsonville. After such hearing the Council shall make a just and equitable deficit assessment by Resolution, which shall be entered in the Docket of City Liens as provided by this Ordinance, and notices of the deficit assessment shall be posted and mailed and the collection of the assessment shall be made in accordance with applicable Sections of this Ordinance.

Section 18: Rebates. If, upon the completion of the improvement project, it is found that the assessment previously levied upon the properties is more than sufficient to pay the costs of such improvements, then the Council must ascertain and declare the same by Resolution, and when so declared, the excess amounts must be entered on the Lien Docket as a credit upon the assessments. In the event that any assessment has been paid, the person who paid the same, or

his legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.

Section 19: Abandonment of Proceedings. The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this Ordinance at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be cancelled or reduced, and any payments made on such assessments shall be refunded in full or in part to the person paying the same, his assigns or legal representatives.

Section 20: Curative Provisions. No improvement assessment shall be rendered invalid by reason of a failure of the Engineer's Report to contain all of the information required by Section 2 of this Ordinance, or by reason of a failure to have all of the information required to be in the improvement Resolution, the assessment Resolution, the Lien Docket or notices required to be 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 error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears to the Council that the assessment is unfair or unjust in its effect upon the person complaining; and the Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

Section 21: Reassessment. Whenever any assessment, deficit or reassessment for any improvement which has been made by the City has been, or shall be set aside, annulled, declared or rendered void, or its enforcement restrained by any Court of this State, or any Federal Court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment, or any part thereof, then the Council may make a reassessment in the manner provided by the laws of the State of Oregon.

Section 22: Bancroft Bonding Act. The provisions of Oregon Revised Statutes Section 223.205 through 223.295, commonly known as the Bancroft Bonding Act, together with amendments or future amendments thereof, are hereby adopted and made a part hereof by reference.

Section 23: Mailing of Notices. A notice shall be deemed mailed when it is sent to the owner's address shown in the Clackamas or Washington County Assessor's records, to the owner's last address known to the City, or to the owner at "Wilsonville, Oregon."

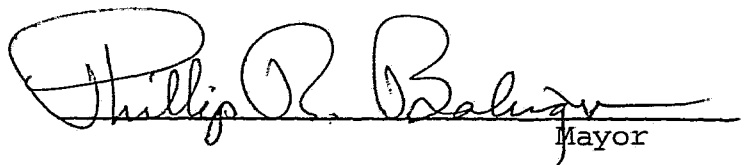
Section 24: Separability. If any Section, Subsection, paragraph, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not effect the validity or constitutionality of the remaining portion of this Ordinance, it being hereby expressly declared that each Section, Subsection, paragraph, sentence, clause or phrase of this Ordinance would have been adopted irresepctive of the fact that any one or more of the Sections, Subsections, paragraphs, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 25: Repeal Prior Ordinances. Ordinance No. 30 enacted August 28, 1972, and all other Ordinances, or parts of Ordinances, of the City of Wilsonville in conflict herewith are hereby repealed.

Passed on first reading of the Wilsonville City Council at a regular meeting thereof on the 6th day of December , 1976 ; ordered posted in three (3) public and conspicuous places in the City of Wilsonville for a period of five (5) consecutive days as required by the Wilsonville City Charter, and to come up for final reading and action of the Wilsonville City Council at a regular meeting thereof on the 7th day of February , 1977, at the hour of 7:30 o'clock p.m. at the Council's regular meeting place in the Wilsonville

ATTEST:


DEANNA J. THOM - City Recorder


Mayor

Passed on final reading of the Wilsonville City Council at
a regular meeting thereof this 7th day of February , 1977 ,
by the following vote: Yeas 4 . Nays 0 .


WILLIAM G. LOWRIE Mayor

ATTEST:


DEANNA J. THOM - Recorder