

## CHAPTER 152: PUBLIC IMPROVEMENTS

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#### **IMPROVEMENT PROCEDURES**

#### **§ 152.01 INITIATION OF PROCEEDINGS; CITY ENGINEER'S REPORT**

(A) Whenever the Council shall deem it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvements, to make any street, sewer, sidewalk, drain, or other public improvement to be paid for in whole or in part by special assessment according to benefits, then the Council shall by motion direct the City Engineer to make a survey and written report for that project and file the same with the recorder.

(B) Unless the Council shall direct otherwise, the report shall contain the following matters;

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(1) A map or plat showing the general nature, location, and extent of the proposed improvements and the land to be assessed for the payment of any part of the cost thereof,

(2) Plans specifications and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the engineer may adopt the plans, specifications, and estimates of that agency;

(3) An estimate of the probable cost of the improvement, including any legal, administrative, and engineering costs attributable thereto;

(4) An estimate of the unit cost of the improvement to the specially benefitted properties;

(5) 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 cost of the improvement to the properties specially benefitted;

(6) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefitted by the improvement, with the names of the record owners thereof and when readily available, the names of the contract purchasers thereof; and

(7) A statement of outstanding assessments against property to be assessed.  
(Ord. 185, passed 4-16-1974)

### § 152.02 COUNCIL ACTION.

After the City Engineer's report shall have 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 the improvement, or it may abandon the improvement.

(Ord. 185, passed 4-16-1974)

### § 152.03 RESOLUTION; NOTICE OF HEARING.

(A) After the council shall have approved the Engineer's report as submitted or modified, the Council shall by resolution declare its intention to make the improvement, provide the manner and method of carrying out the improvement, and shall direct the Recorder to give notice of the improvement by two publications one week apart in a newspaper of general circulation, and by mailing copies of the notice by registered or certified mail to the owners to be assessed for the costs of improvement.

(B) The above-required notice shall contain the following matters:

(1) That the report of the City Engineer is on file in the office of the Recorder and is subject to public examination;

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(2) that the Council will hold a public hearing on the proposed improvement, on a specified date which shall not be earlier than ten days following the first publication of notice, at which objections and remonstrances to the improvement will be heard by the Council; and that if prior to this hearing there shall; be presented to the Recorder valid, written remonstrances of the owners of two-thirds of the land to be specially assessed, then the improvement will be abandoned for at least six months; and

(3) A description of the property to be specially benefitted by the improvement, the owners of the property, and the Engineer's estimate of the unit cost of the improvement to be paid for by special assessments to benefitted properties.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.04 MANNER OF DOING WORK.**

The Council may provide in the improvement resolution that the construction work may be done in whole or in part by the city, by a contract, or by any other governmental agency, or by any combination thereof.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.05 HEARING, OPTIONAL ABANDONMENT**

At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of the hearing of written remonstrances and oral objection, if any, the Council may on its own motion abandon the improvement.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.06 CALL FOR BIDS.**

(A) The Council may in its discretion direct the City Recorder to advertise for bids for construction of all or any part of the improvement project on the basis of the Council-approved Engineer's report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after the public hearing; provided, however, that no contract shall be let until after the public hearing has been to hear remonstrances and oral objections to the proposed improvement. In the event that any part of the work of the improvement is to be done under contract bids, then the Council shall determine the time and manner of advertisement for bids; and the contracts shall be let to the lowest responsible bidder, provided that the Council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The city shall provide for the bonding of all contractors for the faithful performance of any contract let

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under its authority, and the provisions thereof in case of default shall be enforced by action on the name of the city.

(B) If the Council finds upon opening bids for the work of the improvement that the lowest responsible bid is substantially in excess of the Engineer's estimate. It may in its discretion provide for holding a special hearing of objections to the proceeding with the improvements on the basis of that bid, and it may direct the City Recorder to publish one notice in a newspaper of general circulation.

*(Ord. 185, passed 4-16-1974)*

### **COSTS; ASSESSMENT PROCEDURES**

#### **§ 152.20 COSTS; NOTICE OF PROPOSED ASSESSMENT**

If the Council determines that the local improvement shall be made when the estimated cost thereof is ascertained on the basis of the contract award or city departmental cost, or after the work is done and the cost thereof has been actually determined, the Council shall determine whether the property benefitted shall bear all or a portion of the cost. The Recorder or other person designated by the Council shall prepare the proposed assessment to the respective lots within the assessment district and file it in the appropriate city office. Notice of the proposed assessment 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 a date by which time objections shall be filed with the Recorder. Any objection shall state the grounds thereof. The Council shall consider the objections and may adopt, correct, modify, or revise the proposed assessments and shall determine the amount of assessment to be form the improvement, and shall be ordinance spread the assessments.

*(Ord. 185, passed 4-16-1974)*

#### **§ 152.21 ASSESSMENT METHOD; ALTERNATIVE FINANCING**

(A) The Council in adopting a method of assessment of the cost of the improvement may:

(1) Use any just and reasonable methods of determining the extent of any improvement district consistent with the benefits derived;

(2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefitted; and

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(3) Authorize payment by the city of all or any part of any such improvement, when in the opinion on 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 or no payment by the benefitted property of the costs of the improvements.

(B) Nothing contained in this chapter shall preclude the Council from using any other available means of financing improvements, including federal or state grants in aid, sewer charges or fees, revenue bonds, general obligation bonds, or any other legal means of financé. In the event that other means of financing improvements are used, the Council may in its discretion levy special assessments according to the benefits derived to cover remaining part of the costs of the improvement.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.22 OWNER REMEDIES**

Subject to the curative of §152.29 and the rights of the city to reassess as provided in § 152.30 of this code, 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 commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement shall not have been 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 as to lengthen any period of redemption or so as to effect the running of any statute of limitation. Any proceeding on a writ or review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the City Council to remedy or sure the alleged error or defects.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.23 NOTICE OF ASSESSMENT**

Within ten days after the ordinance levying assessments has been passed, the City Recorder shall send by registered or certified mail a notice of assessment to the owner of the assessed property and shall publish notice of the assessment twice in a newspaper of general circulation, the first publication of which shall be made not later than ten days after the date of the assessment ordinance. The notice of the assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within ten days from the

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date of the first publication of notice, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure, and the notice shall further set forth a description of the property assessed, the name of the owner of the property, and the amount of each assessment.

*(Ord. 185, passed 4-16-1974)*

### § 152.24 ASSESSMENT LIENS; COLLECTION

After passage of the assessment ordinance 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 ordinance. Upon this entry in the lien docket, the amount so entered shall become a lien upon the respective lots, parcels of land, or portions thereof, which have been assessed for the improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state permit. Interest shall be charged at the rate of 7% per annum until paid on all amounts not paid within 30 days from the date of the assessment ordinance, and after expiration for 30 days from the date of the assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state; provided however, that the city may at its option enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by person who would be entitled under the laws of the state to redeem that property.

*(Ord 185, passed 4-16-1974)*

### § 152.25 ERRORS IN CALCULATION

Claimed errors in 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 or she shall recommend to the Council an amendment to the Assessment ordinance to correct that error; and upon enactment of the 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.

*(Ord. 185, passed 4-16-1974)*

### § 152.26 DEFICIT ASSESSMENT

In the event that an assessment shall be made before the total cost of 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 be motion declare that deficit and prepare a

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proposed deficit assessment. The Council shall set a time for a hearing of objections to the deficit assessment and shall direct the City Recorder to publish on notice thereof in a newspaper of general circulation. After the hearing the Council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the docket of city liens as provided by this chapter, and notices of the deficit assessment shall be published and mailed and the collection of the assessment shall be made in accordance with §§ 152.23 and 152.24 of this code.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.27 REBATES**

If upon the completion of the improvement project it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of the improvements, then the Council must ascertain and declare the same by ordinance, and when so declared the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same or his or her legal representative shall be entitled to the repayment of the rebate credit or the portion thereof which exceeds the amount unpaid on the original assessment.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.28 ABANDONMENT OF PROCEEDINGS.**

The Council shall have full power and authority to abandon and rescind proceedings for improvement made under this chapter at any time prior to the final completion of the improvements; and if liens have been assessed upon any property under this procedure they shall be cancelled; and any payments made on the assessments shall be refunded to the person paying the same, his or her assigns, or legal representatives.

*(Ord. 185, passed 4-16-1974)*

### **§ 152.29 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 § 152.01 of this code or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, 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 chapter, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or step herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the matters by suitable action and proceedings.

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### § 152.30 REASSESSMENT

Whenever any assessment, deficit, or reassessment of 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 the 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.

*(Ord. 185, passed 4-16-1974)*