

TITLE 12. STREETS, SIDEWALKS, AND PUBLIC PLACES

CHAPTER 12.12

PUBLIC IMPROVEMENTS

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12.12.410 INITIATION

A public improvement may be initiated:

1. By motion of the council; or
2. By petition of property owners representing fifty percent (50%) or more of the property to be assessed for the improvement. (Ord. 681, January 1991)

12.12.420 PROJECT REPORT

When an improvement is initiated, the public works department shall prepare a project report for all the owners of property to be assessed. The report will be distributed by mail or by personal contact by a representative from the city. The report will provide the property owners with information related to the proposed improvements. The report shall inform owners of:

1. A description of the proposed improvement;
2. A preliminary project cost estimate and an estimated cost for the owners of each property to be assessed;
3. The date and time of an informational hearing on the proposed improvement if one is to be held;
4. Such other information as is deemed desirable or necessary. (Ord. 681, January 1991)

12.12.430 INFORMATIONAL HEARINGS

1. The city council may, by motion, direct that an informational hearing for the benefit in property owners be held on the proposed improvements project. The council may elect to hold the hearing or may direct the city administrator to hold the hearing. At the informational hearing, the public works director or his designate shall present a report on the project, including:
 - a. A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof;
 - b. Preliminary estimates of the work to be done; provided, however, that when the proposed project is to be carried out in cooperation with any other governmental agency, the report may adopt the plans, specifications, and estimates of such agency;
 - c. An estimate of the probable cost of the improvement, including any legal, administrative, and engineering costs attributable to it;
 - d. 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 benefited;

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- e. The description and assessed value of lot, each parcel of land, or portion to be benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;
 - f. A statement of outstanding assessments against the property to be assessed.
2. The property owners to be assessed will be given an opportunity to raise questions and/or to provide the city with information related to the project.
 3. Either at the informational hearing, or prior to or after, the city may seek, either orally or in writing, comments from the property owners to determine if they are in favor of or opposed to the proposed improvements.
 4. At the conclusion of the hearing, the public works director will submit the original or a modified report to the city administrator, who will then forward it to the city council for consideration. (Ord. 681, January 1991)

12.12.440 ACTION BY COUNCIL

At the conclusion of the informational hearing or at a subsequent meeting of the city council, the council will consider the report and determine if there is reason to proceed with the improvement project. The council may either approve the report, modify the report, or abandon the project. (Ord. 681, January 1991)

12.12.450 ISSUANCE OF GENERAL OBLIGATION WARRANTS

When issuance of general obligation warrants for the project is contemplated by the city, the following conditions must be satisfied:

1. There must be a legal opinion from the city's bond counsel finding a public purpose in the project; and
2. The estimated total assessment for the project must not equal or exceed one and one-half times the total assessed valuation of the benefited properties, as shown by the last county tax roll. (Ord. 681, January 1991)

12.12.460 RESOLUTION AND NOTICE OF HEARING

If the council approves the report as submitted, the council shall by resolution declare its intention to make the improvement and direct the city administrator to give notice of the improvement by publication in a newspaper of general circulation within the city and by sending copies of such notice by mail to the owners, or the owner's agent, of property to be assessed for the costs of the improvement. The notice shall contain the following:

1. That a written report on the improvement is on file in the office of the city administrator 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 (10) days following the publication of notice, at which objections and remonstrances to such improvements will be heard by the council; and that if, prior to such hearing, there are presented to the city administrator valid written remonstrances on forms provided by the city of the owners of two-thirds of the property to be assessed for the improvement, then the improvement will be abandoned or suspended for at least six (6) months; and that reinitiation of the project after the council abandons or suspends the project will require council action or submission of another petition for improvements pursuant to 12.12.410 of this chapter.
3. A description of the property to be benefited by the improvement, the estimated total cost of the improvement to be paid for by assessments to benefited properties, an estimate of the unit cost of the improvement of the property to be assessed, and a statement that financing will be available at not more than two percent (2%) above the prime lending rate established at the completion of the project;
4. When the improvement is a sidewalk, the council may, in accordance with Chapter 12.04.100 of this title, order the owners of the lots adjacent to the proposed sidewalk to construct the sidewalk, at their expense, under the supervision of the engineer, and conforming to certain plans and specifications, and that upon failure to do so, the city will cause the sidewalk to be constructed and a lien will be placed against the property adjacent to the site of such sidewalk for the cost thereof. (Ord. 681, January 1991)

12.12.470 METHOD OF CONSTRUCTION WORK

1. 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, by any other governmental agency, or by any combination thereof.
2. When the improvement involves construction or reconstruction of a sidewalk, the council may provide in the improvement resolution that the improvement work may be done by the owner and at his/her expense, pursuant to the procedure set forth in this title. (Ord. 681, January 1991)

12.12.480 HEARING PROCEDURE

At the time of the public hearing on the proposed improvement, if the written remonstrances represent less than the amount of property required to defeat the proposed improvement, then on the basis of the hearing or written remonstrances and oral objections, if any, the council may by motion, at the time of the hearing or within sixty (60) days thereafter:

1. Adopt, correct, modify, or revise the proposed assessments;
2. Order the improvement to be carried out in accordance with the resolution; or
3. Abandon the improvement. (Ord. 681, January 1991)

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12.12.490 CALL FOR BIDS

The council may direct the administrator to advertise for bids for construction of all or any part of the improvement project on the basis of the council-approved 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 held to hear remonstrances and oral objection 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 may be let to the responsible bidder whose bid is in the best interests of the city, as determined by the sole discretion of the council, provided that the council shall have the right to reject any or all bids when they are deemed unreasonable or unsatisfactory in the council's discretion. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under this authority, and the provisions thereof in case of default shall be enforced by action in the name of the city. (Ord. 681, January 1991)

12.12.500 NOTICE OF PROPOSED ASSESSMENT

1. If the council determines that the local improvement shall be made, when the cost is ascertained on the basis of the city engineer's estimate, or the contract award, or the city departmental cost, or after the work is done and the cost thereof has been actually determined, the council shall determine whether the property benefited shall bear all or a portion of the cost. "Cost" includes the direct administrative overhead costs incurred by the city pertaining to the improvement project.
2. The administrator or 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. The administrator shall present the proposed assessment to the city council for comment prior to mailing notice of the proposed assessment.
3. Notice of the proposed assessment shall be mailed or personally delivered to the owner or the owner's agent of each lot proposed to be assessed. The notice shall state the amounts of assessments proposed on that property and shall fix a date by which time objections shall be filed with the administrator.
4. Any objection shall state the grounds thereof. Owners of benefited property filing objections are entitled to a hearing before the public and may be heard upon request to the city administrator. (Ord. 681, January 1991)

12.12.510 DETERMINATION OF ASSESSMENT

The council shall consider any objections and may adopt, correct, modify, or revise the proposed assessments and shall determine the amount of assessments to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvements and shall by ordinance spread the assessments. (Ord. 681, January 1991)

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12.12.520 METHOD OF ASSESSMENT: ALTERNATIVE FINANCING METHODS

1. 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 among 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 or no payment by the benefited property of the costs of the improvement.
2. 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, other charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. If 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. (Ord. 681, January 1991)

12.12.530 NOTICE OF ASSESSMENT

Within ten (10) days after the ordinance levying assessment has been passed, the administrator shall mail a notice of assessment to the owner or the owner's agent of the assessed property. The notice of 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 thirty (30) days from the date of the assessment ordinance, or upon the failure of the owner to pay the assessment in full within thirty (30) days from the date of the assessment ordinance, interest will commence to run on the assessment and the property assessed will be subject to foreclosure. The notice shall also describe the property assessed, name the owner of the property, and state the amount of each assessment. (Ord. 681, January 1991)

12.12.540 ENTERING OF LIEN, RECORDS, INTEREST

1. After passage of the assessment ordinance by the council, the city finance officer 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 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 improvements.
2. 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.

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3. Interest shall be charged at the rate set by the council up to a maximum allowed by law until paid on all amounts not paid within thirty (30) days from the date of the assessment ordinance. (Ord. 681, January 1991)

12.12.550 FORECLOSURE PROCEEDINGS

After expiration of thirty (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 persons who would be entitled under the laws of the state to redeem such property. (Ord. 681, January 1991)

12.12.560 ERRORS IN ASSESSMENT CALCULATION

Claimed errors in the calculation of assessments shall be called to the attention of the administrator, who shall determine whether there has been an error in fact. Upon finding an error in fact, the administrator shall recommend to the council an amendment to the assessment ordinance. Following enactment of the amendment, the administrator shall make the necessary correction in the docket of city liens and send a correct notice of assessment to the owner. (Ord. 681, January 1991)

12.12.570 DEFICIT ASSESSMENTS

1. If an assessment is 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.
2. The council shall set a time for a hearing of objection to such deficit assessment and shall direct the administrator to give notice according to the provisions in Section 12.12.560 of this chapter. 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 Section 12.12.540 of this chapter. (Ord. 681, January 1991)

12.12.580 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 such improvements, then the council must ascertain and declare the same by ordinance. In the event that any assessment has been paid, the person who paid the assessment or his/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. 681, January 1991)

12.12.590 ABANDONMENT OF PROCEEDINGS

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The council shall have full power and authority to abandon and rescind proceedings for improvements made pursuant to this chapter at any time prior to the final completion of such improvements. If liens have been assessed upon any property under these procedures, they shall be canceled and any payments made on such assessments shall be refunded to the person paying them, his/her assigns, or legal representative. (Ord. 681, January 1991)

12.12.600 ERROR NOT TO INVALIDATE ASSESSMENT

1. No improvement assessment shall be rendered invalid by reason of:
 - a. Failure of the report to contain all of the information required by Section 12.12.540 of this chapter;
 - b. 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;
 - c. Failure to list the name of or to mail notices to the owner of any property as required by this chapter;
 - d. Any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining.
2. The council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings. (Ord. 681, January 1991)

12.12.610 REASSESSMENT

Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city is set aside, annulled, declared, or rendered void, or its enforcement is restrained by any court of this state, or any federal court having jurisdiction thereof, or when the council is in doubt as the validity of such assessment, deficit assessment, or reassessment or any part thereof, the council may make a reassessment in the manner provided by the laws of the state. (Ord. 681, January 1991)