

ORDINANCE NO. 2344

AN ORDINANCE PRESCRIBING THE METHOD AND PROCEDURE TO BE FOLLOWED IN MAKING STREET, SIDEWALK, SEWER AND OTHER PUBLIC IMPROVEMENTS AND IN DETERMINING THE AMOUNT OF SPECIAL ASSESSMENTS THEREFOR, THEIR APPORTIONMENT TO VARIOUS PARCELS OF PROPERTY AND THE PROPERTY ON WHICH THEY ARE TO BE LEVIED; PROVIDING FOR GIVING NOTICE TO PROPERTY OWNERS AND OTHER INTERESTED PARTIES; PROVIDING FOR HEARINGS ON AND THE LEVY OF SUCH ASSESSMENTS; PROVING FOR THE CREATION, COLLECTION AND ENFORCEMENT OF ASSESSMENT LIENS ARISING THEREFROM AND FOR THE FORECLOSURE THEREOF; AND PROVIDING FOR THE DEFINITION OF CERTAIN TERMS AS USED IN THIS ORDINANCE; REPEAL CLAUSE; AND ESTABLISHING EFFECTIVE DATE BY DECLARATION OF EMERGENCY.

WHEREAS, the charter of the City of Baker, Oregon, as adopted May 16, 1952, empowers the council of the city of Baker, Oregon, to provide by general ordinance for the spread and apportionment of the amount of the assessments, and the boundary and location of the property, lots, district, or area to be assessed; for the making and approval of the plans and specifications; for the notices to property owners and other interested parties; for the hearings, for the composition, organization and procedure of boards of revision or appraisal; for the levy of the assessments; for the creation of a lien; and for any and all other determinations, steps, measures, resolutions, ordinances and actions in relation to assessments made in connection with the making of any public improvements within the city of Baker, Oregon,

Be it ordained by the city of Baker, Oregon:

Section 1. Definition of Terms. Whenever the term "owner" is used herein in relation to the ownership of real property, such term shall be held to mean the record holder of the legal title to the land in question except that if there is a purchaser of the land whose interest therein is evidenced by a recorded contract for the sale thereof, or by a written, verified statement by the record holder of the legal title to the land duly filed with the recorder of the said city of Baker, then such purchaser shall be deemed the "owner."

Whenever the term "city engineer" is used in this ordinance, such term shall be held to refer to the duly appointed incumbent of the office of city engineer of the city of Baker, Oregon, if such an office shall exist and be then occupied. If such an office shall not exist or shall be vacant, the council shall designate an engineer or firm of

engineers in connection with any proposed improvement, in which event the term “city engineer” shall be held to refer to the engineer or firm of engineers so designated.

Section 2. Declaration of Intention, Report from City Engineer, Recommendations.

(a) The words “public improvements” or “improvement” as used herein shall mean the construction, improvement, repair, extension, widening and straightening of any street, avenue, alley, sidewalk, crosswalk, parking, paving or curbing, or any part thereof, or the construction, improvement or repair of any sewer or drain or any part thereof, or of any lighting improvement or facility, unless such term is hereinafter qualified.

(b) The words “property benefited” shall mean all property specially benefited by the public improvement.

(c) Whenever the council shall decide to make street, sewer, sidewalk, or other public improvements to be paid for in whole or in part by special assessments according to benefits, the council shall by motion declare its intention to initiate such improvement and direct the city engineer to make a survey and written report of such project and file the same with the city recorder within the time set forth by the council in the motion. Such report shall contain:

(1) A plat or map showing the general nature, location and extent of the proposed improvements and the lands to be assessed to pay all or any part of the costs thereof and the boundaries of the proposed improvement areas or districts;

(2) Plans, specifications and estimates of the work to be done.

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

(4) 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 improvements to the property specially benefited, which recommendation shall be in accord with the provisions of Section 10 below;

(5) An estimate of the unit cost of the improvement to the specially benefited properties derived from applying the recommended assessment method to the estimated cost of the improvement;

(6) A description of the location and assessed value of each lot, tract or parcel of land, or portion thereof, to be especially benefited by the improvement, with the names of the record owners thereof, and when readily available, the names of other owners thereof as herein defined;

(7) A statement showing outstanding assessments against property to be assessed;

(8) Any other information required by the council.

Section 3. Council Consideration of Engineer’s Report. After the city engineer’s report has been filed with the city recorder, the council shall consider the report.

The council may approve the report as submitted or may amend and approve the report as amended. The council may direct the city engineer to furnish the council with a further report or information or, on the basis of the engineer's report, the council may by motion record its intention to abandon the improvement.

Section 4. Notice of Hearing on Council Approved Engineer's Report. After the council has approved the engineer's report as submitted or as amended by the council:

(a) The council shall direct the city recorder to cause to be published forthwith once each week for two successive weeks in a newspaper of general circulation, printed and published in Baker, a notice stating:

(1) That the report, or amended report, of the city engineer, as approved by the council, is on file in the city recorder's office, subject to examination, giving the date, no earlier than 10 days immediately following the first publication of notice when any objections thereto will be considered by the council at a public hearing and giving the time of and place of such public hearing;

(2) That written remonstrances may be filed against the proposed improvement at the office of the city recorder not later than the scheduled time for the council hearing of objections to the proposed improvement;

(3) Remonstrance of two-thirds of the front footage of property owners concerned shall operate to defeat such motion or petition and the same may not again be considered by the council for a period of six months;

(4) A description of the boundaries of the district to be specially benefited by the improvement, giving the names of the record owners thereof and, when readily available, the names of other owners thereof as defined herein;

(5) The estimated total cost of the improvement which is to be paid for by special assessment of benefited property;

(6) The city engineer's estimated unit cost of the improvement to the specially benefited property clearly indicating that this is an estimate and not an assessment.

(b) The council shall also direct the city recorder to send forthwith by certified mail the same notice, at his last known address, to each record owner and, when readily known, to each owner, as defined herein, of property to be specially benefited by the proposed improvement. Several proposed improvements may be combined in one proceeding, and may be described in one notice. (As amended by Ord. 2621 passed 8-25-69)

(c) The council may, in its discretion, direct the city manager upon the basis of the council-approved engineer's report, to advertise for bids and designate the time at which such bids shall be opened, which time may be the time of the aforesaid hearing; provided that no such contract shall be let until after any objections to the council-approved engineer's report are heard by the council, and provided that in the letting of any such contract the provision of Section 6 herein shall be followed by the council.

(d) The council shall exercise the powers set forth in this Section 4 by resolution.

Section 5. Hearing. At the aforesaid hearing the council shall hear oral objections to the proposed improvement and shall consider any written remonstrances thereto. Written remonstrances of two-thirds of the front footage of property owners concerned shall defeat the proposed improvement, in which event no further action to effect the improvement shall be taken for six months. "Owner" shall have the meaning for this purpose that it is given herein. If the council, after hearing objections and considering any remonstrances, finds that there is not a sufficient remonstrance, it may proceed with the improvement.

Section 6. Manner of Doing Work, Contracts, Bids, Bonds. The council shall provide by resolution the time and manner of doing the work of such improvement, and may provide for the city to do the work or it may award the work on contract. In the event that the work is done under contract, bids shall be received after advertisement for such time as the council may determine on all such work. The contract shall be let to the lowest responsible bidder; provided that the council shall have the right to reject any or all bids when they are deemed unreasonable or unsatisfactory. The council shall provide for taking 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 by action in the name of the city of Baker.

Section 7. Special Hearing When Low Bid Substantially Exceeds Engineer's Estimate. If the Council finds upon opening bids for the work of such improvement that the lowest responsible bid substantially exceeds the engineer's estimate, may, in its discretion, hold a special hearing of objections to proceeding with the improvement on the basis of such bid and may direct the city recorder to publish reasonable notice thereof in a newspaper of general circulation, printed and published in Baker, Oregon.

Section 8. Assessment Ordinance. When the council, after the aforesaid hearing, or hearings, shall determine to proceed with the improvement, it shall pass an ordinance assessing the various lots, parcels and tracts of property specially benefited thereby with their apportioned share of the cost of the improvement; but the passage of such an assessment ordinance may be delayed until the contract for the work is let or the improvement completed and the total cost thereof determined, if the council shall desire to avoid deficit assessments or rebates or for any other reason deemed sufficient by the council; provided, further, that the city recorder of the city of Baker, Oregon, prior to the passage of the assessment ordinance, shall cause to be published once each week for two successive weeks in a newspaper of general circulation, printed and published within the city of Baker, Oregon, a notice setting a time for hearing and the levying of the assessment, under the direction of the council, the last of which of two publications shall be not less than three days prior to the time set for such hearing which notice shall state the approximate total cost of the entire improvement, the amount of the assessment, proposed to be made on each lot or parcel of land, describing

the same, and the time and place when hearing thereon and the levying of such assessment will be heard by the council of the city of Baker. After the publication of such notice, and until the date of such hearing, the owner of the property affected by such assessment may file his objections and may be present at such hearing of the council and present such objections. Ten days notice of said meeting shall be given by posting notice thereof in three public places in said city; and it shall also be the duty of the city recorder at least 10 days prior to such hearing, to deposit in the United States mail a copy of said notice postpaid to each of those designated as the owner of any lot or part thereof, or tract of land assessed for the improvements as shown by the certificate of the abstractor, abstract company or person or persons engaged in the searching or examination of titles as hereinafter provided by Section 11 hereof. Said notice shall also contain a notice of the actual or estimated cost, as the case may be, of said improvement and of the apportionment thereof; and said notice shall set forth the amount of the proposed assessment upon each lot and part thereof and tract of land, but all such information may be incorporated into the said notice by reference to the resolution of the estimated cost and apportionment, which shall be filed in the office of the city recorder and there open for the inspection of all persons interested therein. Said notice shall also state that all persons interested in said assessment are notified and invited to appear and show cause, if any exists, wherein the same is unjust or inequitable to the owners of such property and that the same may be properly equalized and adjusted. If the address of any person to receive a copy of said notice as herein provided shall be unknown to the recorder, and if such person has an agent whose name or address is known to the recorder, he shall mail such notice to such agent; otherwise he shall mail it to the owner addressed to Baker, Oregon.

At the time and place set for said hearing, the council shall consider the said proposed assessment and the levying of the assessment, and all objections made thereto, and shall have the power in its discretion and without further notice to consider, ascertain and determine the same in the amount of the special and peculiar benefits accruing to each lot or parcel of land so assessed by reason of such improvement and shall declare the same by an assessment ordinance. The council shall enter for record its findings and decisions on any of said objections.

Each lot or part thereof, or parcel of land, shall be deemed to be benefited by such improvement to the full amount of the assessment levied thereon.

Section 9. Revisions and Reassessments. The council shall have the power to adjourn such hearings, provided for in Section 8, from time to time and shall also have power in its discretion to revise and correct, increase or decrease, or to set aside and order the remaking of assessments, or any part thereof, made under the provisions of this ordinance. Thereafter the council may declare and levy the said reassessments, or reassessment, by ordinance as revised, corrected, increased, decreased or remade, and

may direct the recorder to enter a statement thereof in the docket of city liens, and as further provided in Section 12 of this ordinance, correcting or revising any previous assessments made hereunder.

Section 10. 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 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, on account of topographical or physical conditions, unusual 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 specially assessed and the benefits derived by the city as a whole.

Nothing herein contained shall preclude the council from using other available means of financing improvement, including 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 to cover any part of the costs of the improvement not covered by such means.

Section 11. Title Examination. For the purpose of ascertaining who is the owner of any lot or part hereof, or tract of land assessed for the improvement or repair of any street, alley or avenue as herein contemplated, the recorder shall take the certificate of any abstractor, abstract company or person or persons engaged in

the searching or examination of titles who may be designated by resolution of the council thereof, which such certificate shall state who is the owner of such lot or part thereof, or parcel of land subject to said assessment on the date the council declared its intention to make the improvement, and as shown by the records in the office of the county clerk of Baker County, Oregon.

Section 12. Lien Recording, Interest, Foreclosure. After the ordinance levying assessments has been passed and any and all adjustments, made, or any revised or corrected assessments or reassessments made the city recorder shall enter in the docket of city liens a statement of the respective amounts assessed upon each particular lot, tract or parcel of land with the names of the record owners thereof and, so far as readily known, the names of the owners thereof defined herein. Upon such entry in the lien docket, the

amount so entered shall be a lien and charged upon the respective lots, tracts, and parcels of land 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. Interest shall be charged at the rate of 7 per cent per annum until paid on all amounts not paid within 30 days from the date of such entry, or entry corrected pursuant to any provision of this ordinance. The city may proceed to foreclose or enforce any lien to which it shall be entitled pursuant to the provisions of this ordinance at any time after 30 days from the date on which the assessment, or assessment corrected pursuant to any provision of this ordinance, was entered in the lien docket, in the manner provided for the foreclosure or enforcement of liens by the general laws of the state of Oregon.

Section 13. Notice of Assessment; Bonding. Within 10 days after the ordinance levying assessments has been passed, the city recorder shall send by certified mail, to his last known address, a notice of assessment to the record owner, and so far as readily known, to the owner as herein defined, of each lot, tract or parcel of land 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 18 per cent per annum 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. Such record owner or other owner as herein defined may make application to bond such assessment pursuant to the provisions of ORS.. 223.205 to 223.300, which is known as the "Bancroft Bonding act," together with all amendments or any reenactment thereof. (Section 13, as amended by Ord. No. 2421, passed May 20, 1957, and as amended by Ord. No. 2621 passed August 25, 1969.) (As Amended by Ord. 2853 passed 12-8-81)

Section 14. Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the city manager prior to any payment on account thereof. Said city manager shall determine whether there is an error in fact. 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 by the council, the city recorder shall make the necessary correction in the docket of city liens and send by certified mail to the last known address of the owner a corrected notice of the assessment.

Section 15. Deficit Assessment. If the assessment is made before the total costs of the improvement are know, and it be found that the amount assessed is insufficient to defray the expenses 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 city recorder to publish notice thereof in a newspaper of general circulation, printed and published in Baker, Oregon, such published notice to be done in the same manner as the published notice required by

Section 8. No other notice shall be required under this Section 15. The council upon such hearing shall make a just and equitable deficit assessment by ordinance. Such deficit assessment shall be consolidated with the assessment in the lien docket in accordance with the provisions of Section 12 hereof. Thereafter the provisions of Section 13 and 14 hereof shall be applicable with regard to such deficit assessment.

Section 16. Rebate. If, 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, it must be entered in the docket of city liens as 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, by a warrant on the city treasury.

Section 17. Abandonment of Proceedings. The council shall have full power and authority to abandon and rescind proceedings for improvements undertaken hereunder at any time prior to the final consummation of such proceedings; and if liens have been assessed upon any property under this procedure, they shall be canceled, and any payments made thereon shall be refunded to the payor, his assigns, or legal representatives.

Section 18. Curative Provisions. No improvement assessment shall be 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, tract or parcel of land 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 hereinabove specified, unless it appear that the assessment as made, insofar as it affects the person complaining, is unfair and unjust, and the council shall have power and authority to remedy and correct all such matters by suitable action and proceedings.

Section 19. Reassessment; Rebonding.

(1) Reassessments as authorized by ORS. 223.410 shall be made in the manner provided by ORS. 223.405 to 223.485, as now or hereafter amended or reenacted.

(2) Rebonding of unpaid assessments shall be made in the manner provided by ORS. 223.705 to 223.755, as now or hereafter amended or reenacted. (Section 19, as amended by Ord. No. 2421, passed May 20, 1957.)

Section 20. Repeal Provision. Ordinance No. 1497 and all other ordinances or parts of ordinances, or other acts of the city of Baker, Oregon, in conflict herewith be and the same hereby are repealed.

Section 21. Effective Date Established by Declaration of Emergency. Whereas, it is necessary that a general ordinance establishing the method and procedure for the determination of the amount of assessments, spread in apportionment thereof, the boundary and location of the property, lots district or areas within the city of Baker, Oregon and for any and all other determinations, steps, measures, resolution, ordinances, and actions in relation to the making and levying of assessments in connection with the making of public improvements, as authorized by Sections 35, 36, and 37 of the charter of the city of Baker, Oregon, be adopted and established, in order that public improvements can be made within the city of Baker, Oregon, immediately; and

Whereas, it is necessary in the interest of the public health, safety and welfare of the citizens and residents of the city of Baker, Oregon, that it be possible to make such public improvements immediately; and,

Whereas, the passage of a general ordinance establishing the procedures in connection with the making of such public improvements should be done immediately; and

Whereas, it is the finding and judgment of the council that an emergency exists for the foregoing reasons, necessitating that this ordinance become effective and in full force immediately upon its passage by the council and approval by the mayor,

Now, therefore, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately upon its passage by the council and approval by the mayor.

Passed by the council of the city of Baker, Oregon, this 27th day of July, 1953.

Signed by the mayor of the city of Baker this 30th day of July, 1953.