

Title VI

Public Improvements

Chapters:

Chapter 6.01 Local Improvements and Special Assessments

Chapter 6.01

Local Improvements and Special Assessments

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Section 6.01.010 Authority

The City may create and establish a local improvement district for any municipal improvement and may levy assessments against properties specially benefited thereby to pay part or all of the costs thereof. The method of apportioning shall be established in the ordinance initiating the district. (Ordinance 90-7)

Section 6.01.020 Ordinance of initiating district

A. If the Council intends to make a local improvement at the expense of the owners of the property benefited, it shall have plans for the work and estimates of the cost prepared and shall adopt an ordinance declaring its intention to order the improvements to be acquired, constructed, and installed therein.

B. The Council shall fix the time, date, and place of hearing on the ordinance, and at the hearing there shall be on file and open to all persons attending a map or diagram showing thereon the lots, tracts, and parcels of land which will be specially benefited by the proposed improvement and a statement setting forth:

1. The estimated cost of the improvements, which cost may include any of the cost elements in AS 29.46.110(a);

2. The estimated proportion of the costs to be borne by the property specially benefited by the improvements and the source of any other money needed to pay the balance of the costs; and

3. The estimated amount of the cost to be borne by each lot, tract, or parcel of land.

C. The ordinance shall contain a finding by the Council that the formation of the local improvement district (LID) is in the public interest and it shall set forth the following:

1. The boundaries of the LID;

2. Improvements to be acquired, constructed, and installed;

3. The estimated cost;

4. The amount of the City funds to be used (if any) to supplement funds obtained through special assessment;

5. An order directing the work to be done;

6. Authorization to acquire any land needed;

7. Subject to the ratification by the voters pursuant to AS 29.35.030, authorization to commerce any eminent domain proceedings require, with provision made for assessment proceedings that may be required to pay any eminent domain awards;

8. Appropriation of funds for total cost of project;

9. Authorization for issuance of special assessment bonds to pay the cost of the project or a statement that such bonds will not be used; and

10. Such other provisions as are desired and are not inconsistent with AS 29.46. (Ordinance 90-7)

Section 6.01.030 Notice of Hearing

A. Notice of the hearing shall be published at least once in a newspaper or general circulation published within the City, and shall be posted in at least thirty (30) days prior to the date set for the hearing. The notice shall contain a statement of the following:

1. A general description of the improvements to be ordered and description of the boundaries of the proposed LID;

2. A statement of the estimated cost of the proposed improvements and the estimated proportions of the cost to be borne by each property specially benefited thereby;

3. A statement that a map or plat showing thereon the lots, tracts, and parcels of land which will be specially benefited by the proposed assessment against each lot, tract, or parcel of land is on file for public inspection at the office of the clerk;

4. A statement whether special assessment district bonds will be issued and sold to provide funds to pay the cost of improvements; and

5. The time, date, and place of the hearing and that owners of any property within the proposed district may file a written objection to the creation of the district and the ordering of the work to be done therein with the clerk up to the time of the hearing.

B. Notice of the hearing shall also be mailed to all owners of lands within the proposed district at their last known address at least thirty (30) days prior to the date set for the hearing. In addition to the items required to be set forth in subsection A of this section, the mailed notice shall contain:

1. A description of each lot, tract or parcel of land owned by its

owner and the estimated assessment to be levied against each property; and

2. A statement that the assessment proposed to be levied against each lot, tract, or parcel of land is an estimated amount and that when actual costs are known they will be assessed against all of the real property in the LID in accordance with benefits received. (Ordinance 90-7)

Section 6.01.040 Hearing

At the hearing the Council shall hear objections from any owner affected by the formation to the district and may make such changes in the proposed boundaries thereof or such modifications in the plans of the proposed improvements to be constructed as shall be deemed necessary/ The Council may not change the boundaries of the district to include property not previously included therein without first giving new notice to owners in the manner and form within the time provided for the original notice. (Ordinance 90-7)

Section 6.01.050 Protest and Revisions

If written protest as to the necessity of the local improvements are filed with the clerk or at the hearings by owners of benefited real property which will bear fifty percent (50%) or more of that portion of the estimated cost of the improvement which will be borne by owners of benefited property, the improvements shall not proceed until the protests have been reduced so that the real property of those still protesting shall not bear fifty percent of the estimated cost of the improvement; provided however that the Council by ordinance may authorize the improvement by an affirmative vote of three-fourths (3/4) of the council members. (Ordinance 90-7)

Section 6.01.060 District Area

An LID may include adjoining or neighboring property even though the improvements thus made are not connected or continuous. The cost and expense of each continuous unit of the improvement may be ascertained separately as near as may be, and if so ascertained separately the assessment rates shall be computed on the basis of the cost and expense of the unit. (Ordinance 90-7)

Section 6.01.070 Change in District Boundaries

A. At any time in its discretion the Council may eliminate by ordinance from the district any unit of the improvement which is not completed and may proceed with the construction of the balance of the improvements within the district as fully and completely as though the eliminated unit had not been included in the first district. The assessments to be levied to pay part or all of the costs of the improvements actually constructed may be levied only against the properties within the district specially benefited thereby.

B. The Council by resolution shall fix a time, date, and place for a hearing on the question of whether it should abandon the acquisition, construction, and installation of a portion of the improvements. Notice of the hearing shall be published at once, at least fifteen (15) days prior to the date thereof, in a newspaper of general circulation within the City and shall be mailed at or prior to the date of publication to all owners of property within the district. The notice shall state the proposed Council action and shall also require that any owner who objects thereto shall file a written notice of that objection with the clerk at or prior to the hearing.

C. At the time of the hearing, the Council shall hear all the protests and all evidence material to the question of whether the completion of the improvements should be abandoned. After considering the evidence, the Council then shall decide whether to abandon a portion of the improvements. In the event the Council decides that the portion of the improvements should not be completed, the cost of the improvements incurred at the time of the abandonment shall be assessed only against the property within the district specially benefited by the improvements actually completed.

D. Whenever, prior to the confirmation of the assessment roll for an LID, property within the LID is subdivided or otherwise replatted, the Council may, by ordinance, make minor adjustments to the LID boundary to make such boundaries conform to property lines in the subdivision. Notice of proposed boundary adjustment shall be mailed or delivered to the subdivider and grantees of the subdivier. (Ordinance 90-7)

Section 6.01.080 Unanticipated Costs

A. Construction by contractor or contractors.

1. When the improvements in any LID are to be acquired, constructed, and installed by a contractor or contractors, and if it appears that consideration of the contract cost plus all other costs of improvements will exceed the estimated cost as it appears on the approving ordinance by twenty percent (20%) or more, then at least thirty (30) days before the notice to proceed is given the contractor or contractors, the clerk shall give notice of the estimated increased cost by certificate mailed to the owners of the lots, tracts, and parcels of land within the district at their last known address and shall also publish, on or before the same date, similar notice at least once in a newspaper of general circulation published within the City.

2. The mailed and published notice shall state the amount and percentage of total cost of the expected additional charges over the last complete estimated cost, and shall further state that unless written objections to the Council's ordering the contractor or contractors to proceed are filed with the clerk by the owners of the property within the district bearing fifty percent (50%) or more of the estimated cost of the improvements to be paid from assessments within twenty-five (25) days from the

date of the mailing and publishing of the notice, the contractor or contractors will be ordered to proceed, and that the estimate of costs as increased shall be the cost of improvements until all actual costs after completion are known.

3. In the event written objections are filed by the owners of property within the district bearing fifty percent (50%) or more of the estimated cost of the improvements to be paid from assessments, then no notice to proceed shall be given the contractor or contractors and further work on the project shall cease, unless the Council by affirmative vote of three-fourths of its members directs the projects to continue. Costs of the project to date of termination shall be considered LID costs and assessed according to the original ordinance creating the LID.

B. Construction by force account.

1. When the improvements in any LID are to be acquired, constructed, and installed by the City by force account, then within thirty (30) days after the commencement of the work the Mayor shall cause a certificate to be filed with the clerk stating whether the currently estimated total cost of improvements will be twenty percent (20%) or more in excess of the last complete estimate of cost. If the Mayor determines that the new estimate of cost is twenty percent (20%) or more over the last complete estimate, then a similar notice as required in subsection (A) (2) of this section shall be given to the owners of the lots, tracts, and parcels of land within the district at the same time and in the same manner as therein provided.

2. In the event written objections are filed by the owners of property within the district bearing fifty percent (50%) or more of the estimated cost of improvements to be paid from assessments, work on the project shall cease unless the Council by affirmative vote of three-fourths of its members directs the project to continue or until one of the following alternatives shall be undertaken by the Council:

a. The Council by resolution determines that the City shall pay any additional costs of the improvements greater than twenty percent (20%) over the previous estimate of the assessments, or

b. The improvement work performed to date of cessation shall be continued only to such extent as to put the area under construction in no worse condition than it was before construction started. Costs shall be considered LID costs and assessed according to the original ordinance creating the LID. (Ordinance 90-7)

Section 6.01.090 LID Funds

A. Each LID of the City shall be given a number in the ordinance creating the district and each such ordinance shall create a special assessment fund number within the general treasury. Into the fund shall be paid all receipts pertaining to the LID including

but not limited to proceeds from the sale of bonds, transfers from the City general fund, and assessments as paid.

B. The fund shall be drawn upon for the purposes of paying construction costs of the LID, redemption of bonds, the payment of interest thereon, and any other costs of the project. (Ordinance 90-7)

Section 6.01.100 Computation of Assessments and Preparation of Roll

A. A correct account shall be kept of all the expenses of the improvement. The expenses to be assessed may include all costs incident to the making of the improvement, as well as the costs of all items of work or expense which reasonably enter into the making of the improvement or reasonable arise in connection with the improvement, including but not limited to interest during construction, engineers' and attorneys' fees, property acquisition, financing costs including interest, and costs to be incurred in the collection of the assessment. After the total cost of the improvement is established or estimated, that portion of the cost to be borne by special assessments shall be apportioned and spread against the various tracts of real estate in proportion to the benefits to be received by each and entered on the assessment roll. IN anticipation of delinquent assessments there may be added to each separate assessment appearing on the assessment roll a sum not less than three percent (3%) nor greater than then percent (10%) of the assessment. Such assessment roll shall contain a brief description or designation of each tract or property, the name or the owner or reputed owner, and the amount of the proposed assessment.

B. Property which has been subdivided subsequent to formation of the LID but prior to certification of the assessment roll shall be assessed on the same basis as other property in the LID unless such an assessment method would be an inequitable method of assessing the affected property, which method may be revised and altered by the board of equalization at the hearing on the assessment roll. (Ordinance 90-7)

Section 6.01.110 Notice of Hearing

A. When the assessment roll for any LID has been prepared as provided in this chapter, it shall be filed with the clerk. The Council then shall fix a date for a hearing thereon. Notice of the hearing shall be published at least once in a newspaper of general circulation within the City, at least fifteen (15) days prior to the date on which the hearing will be held. Notice of the hearing shall also be mailed by certified mail at least fifteen (15) days prior to the hearing date to owners of the lots, tracts, or parcels of land listed on the assessment roll at their last known address.

B. The published notice of the hearing shall specify the number of the LID and a short statement of the nature of the improvements completed therein and shall contain any other information deemed relevant by the Council or the clerk and shall

notify all persons who may desire to object to such assessment roll or any of the separate assessments appearing thereon:

1. To make their objections in writing and to file them with the clerk at or prior to the fixed time for the hearing.

2. That at the time and place fixed for the hearing and at times to which the hearing may be adjourned, the Council will sit as a board of equalization for the purpose of considering the roll and the separate assessments appearing thereon: and

3. That at the hearing or the times to which it may be adjourned, the Council will consider the objections made and will correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo, and at the conclusion of the hearing or hearings will confirm the roll.

C. The mailed notice of the hearing shall contain all of the statements and information required for the published notice and, in addition, shall also contain a description of each lot, tract, or parcel of land owned by the owner to which it is addressed being assessed, and the amount of the proposed assessment against each property.

D. Proof of the mailing of the notice shall be made by the clerk's filing an affidavit with the Council setting forth the mailing. The affidavit is conclusive as to facts stated in it. (Ordinance 90-7)

Section 6.01.120 Hearing

At the time of such hearing all persons concerned shall have a right to present their objections to the assessment or any part of it, and to pointing out errors and inequalities, and submit reasons for amendments and corrections. The Council may continue the hearing from time to time. After the Council has heard all objections it may correct, revise, raise, lower, change, or modify the roll or any part thereof or set aside the roll and order the remaking of the assessment. The Council shall adopt a resolution confirming the roll as corrected or revised by it. (Ordinance 90-7)

Section 6.01.130 Waiver of Objections

All objections to the confirmation of the assessment roll or any of the separate assessments appearing thereon shall be in writing and shall state clearly the grounds of objections. Objections not made in writing and not filed with the clerk at or prior to the time of the original hearing shall be conclusively presumed to have been waived. (Ordinance 90-7)

Section 6.01.140 Contest of Assessment

The regularity or validity of an assessment may not in any manner be contested or questioned by a person who did not file objection to the assessment roll prior to its confirmation. (Ordinance 90-7)

Section 6.01.150 Limitation on Actions

No special assessment procedure may be contested by an action at law or in equity unless commenced within sixty (60) days after confirmation of the special assessment roll. (Ordinance 90-7)

Section 6.01.160 Exceptions

When it can be demonstrated by the property owner in a hearing before the Council that the property owner was unable to file a timely objection to an assessment under this chapter, and when it is clearly established that an error has been made in the computation of the assessment, that Council may authorize the City's payment on the assessment of any amount not exceeding an amount equal to the amount of the error. No hearing may be held under this section unless the property owner has applied for a hearing within sixty (60) days following the date the assessment roll was approved. (Ordinance 90-7)

Section 6.01.170 Assessment Lien

The assessment is a lien upon the property assessed from the time it is levied. The lien is paramount and superior to any other lien created before or after the assessment, except a lien for a prior assessment or for general real property taxes. Notice of assessment liens shall be filed in the appropriate recording office. (Ordinance 90-7)

Section 6.01.180 Notice of Assessment and Time for Payment

A. After the assessment roll has been completed, the Council by resolution shall fix a time within which the assessments shall be paid and when they become delinquent. The time of delinquency may be not less than forty-five (45) days after the adoption of the resolution.

B. An assessment which is not paid before delinquency draws interest at a rate of ten percent (10%) per year. The Council by resolution fixing the time of delinquency may also provide that after delinquency a penalty of no greater than twelve percent (12%) shall be added to the delinquent assessment. The penalty also draws interest at the rate of ten percent (10%) per year.

C. As soon as the assessment roll has been placed in the hands of the clerk for collection s/he shall publish a notice in a newspaper of general circulation published

within the City stating that the roll is in the clerk's hands for collection and that all or any portion of any assessment appearing thereon may be paid within forty-five (45) days from the date of the first publication of the notice without penalty of interest.

D. The clerk shall also mail a similar notice to each owner of property that has been assessed in the LID. The notice shall also designate the property, the amount of the assessment, the date of delinquency, and the amount of penalty provided for, if any.

E. Within five (5) days after the notices to the owners of each property assessed are deposited in the post office in accordance with this section, the clerk shall file his/her affidavit setting for the mailing. The affidavit is conclusive as to the facts stated in it except in proceedings against the clerk for perjury or for malfeasance, or nonfeasance in office. (Ordinance 90-7)

Section 6.01.190 Lump Sum of Installment Payment