

ROAD IMPROVEMENT ASSESSMENTS

36.005 AUTHORITY.

ORS 371.610 empowers a county by ordinance to supersede provisions of state law that authorize use of assessments to finance county road improvements, and to provide a procedure for collecting such assessments.

36.010 DEFINITIONS.

As used in Sections 36.005 to 36.085, unless the context requires otherwise:

- (a) "Board" means the Polk County Board of Commissioners.
- (b) "Engineer" means the Polk County Road Official designated by order of the Board.
- (c) "Improvement" means the reconstruction or repair of a County road or the construction, reconstruction, or repair of sidewalks, curbs, or gutters when such occurs in conjunction with a County road project. [Amended by Ord. No. 92-35, Sec. 1.]
- (d) "Market Value" means the highest price in terms of money which a parcel of real property will bring if exposed for sale in the open market, allowing a period of time typical for the particular type of property involved and under conditions where both parties to the transaction are under no undue compulsion to sell or buy and are able, willing and reasonably well-informed. "Market Value" need not be the same as true cash value and is not reduced by provisions for special assessments or deferrals under the real property taxation laws of Oregon.
- (e) "Owner" means a vendee under a recorded land contract or, if there is no such contract, the holder of the record title, which vendee or holder has a present interest equal to or greater than a life estate.
- (f) "Road" means the entire right-of-way of any County road. [Amended by Ord. No. 91-13, Sec. 1]
- (g) "Summary Road Improvement Procedure" means the streamlined process utilized by Polk County (in lieu of the basic assessment process provided for herein) to ascertain if a sufficient number of owners are prepared to sign a binding commitment to proceed with a cost share improvement. [Added by Ord. No. 07-05.]
- (h) "Urban standard" means a standard of construction that includes sidewalks, curbs, or a road width which is wider than the width specified by the County for the class of road which is being improved. [Added by Ord. No. 92-35, Sec. 2.]

- (i) "Parcel" means a piece of real property (including improved or unimproved land) that is evaluated by the Engineer to determine the benefit gained from the road improvement. Any assessment and accompanying recorded lien may only be made against a parcel. While a tax lot may be contiguous with the underlying parcel, description of a parcel by only the tax lot number shall not be adequate. [Added by Ord. No. 00-10]
- (j) "Description of Real Property (parcels)" As per ORS 93.600, unless otherwise prescribed by law, real property shall be described for recordation by giving the subdivision according to the United States survey when coincident with the boundaries thereof, or by lots, blocks and addition names, or by partition plat recording and parcel numbers, or by giving the boundaries thereof by metes and bounds, or by reference to the book and page, document number or fee number of any public record of the county where the description may be found or in such other manner as to cause the description to be capable of being made certain. However, description by tax lot number shall not be adequate. Initial letters, abbreviations, figures, fractions and exponents, to designate the township, range, section or part of a section, or the number of any lot or block or part thereof, or any distance, course, bearing or direction, may be employed in any such description of real property. [Added by Ord. No. 00-10]

36.015 INITIATING IMPROVEMENT PROCEEDINGS.

- (1) Proceedings for a County road improvement may be initiated by:
 - (a) Resolution of the Board; or
 - (b) A petition signed by not less than 60 percent of the owners of the benefited land and presented to the Board. The petition must require each signer to allege that, if there are co-tenants, all co-tenants of each parcel of land represented by the signer also have signed the petition;
 - (c) Submission of binding commitment affidavits signed by 75% of the project financial interests, or 75% of the owners of the benefited land. The affidavit must be signed by all persons or entities holding any recorded interest in each subject parcel of benefited land. [Added by Ord. No. 07-05.]
- (2) A resolution, petition or binding commitment affidavit under this section shall clearly describe the nature of the proposed improvement and list each parcel to be benefited and identify its owner or owners. [Modified by Ord. 00-10]
- (3) A resolution, petition or binding commitment affidavit to improve a County road to an urban standard shall not be adopted or accepted by the Board of Commissioners unless jurisdiction of such road and improvements will be surrendered to and accepted by an incorporated city prior to or upon completion of the improvement. This provision shall only apply to improvements proposed for areas which are then located within the LCDC acknowledged urban growth boundary for an incorporated city. [Added by Ord. No. 92-35, Sec. 3]

36.020 CO-TENANTS SIGNING PETITION OR OBJECTION.

In the case of tenants by the entireties, joint tenants or tenants in common, a parcel of land is considered as having one owner for purposes of a petition under Section 36.015 or an objection under Section 36.035. This owner is considered to have signed the petition or objection only if every co-tenant of the parcel has signed.

36.025 INVESTIGATION AND COST ESTIMATE; RECOMMENDED ASSESSMENT PROGRAM.

(1) When a resolution is adopted or petition presented under Section 36.015, the Board shall refer it to the Engineer, who shall investigate the proposed improvement and submit within 90 days a feasibility report to the Board as provided in Subsection (2) of this section.

(2) The report shall include an estimate of the cost of the improvement and a recommendation as to what portion of the project cost shall be borne by the County. If the cost of the proposed improvement is to be paid in whole or in part by assessments against parcels of land specially benefited by the improvement, the Engineer shall include in his report:

- (a) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any part of the cost to the properties specially benefited. For sidewalks, the method of assessment shall be the front footage method specified in ORS 371.642. [Amended by Ord. No. 92-35, Sec. 4]
- (b) A recommendation of what portion, if any, of the total project cost should be paid by the County. [Added by Ord. 92-35, Sec. 5., modified by Ord. No. 00-10]
- (c) The description as per 36.010(8) of each parcel, with the names of the owners thereof, as listed in the petition under Section 36.015 as a benefited parcel. Each parcel shall be assessed a portion of the cost of the improvement corresponding to the relative benefit to the parcel from the improvement as determined by the Engineer. However, no assessment shall exceed market value of a parcel as determined by the Assessor, unless the owners thereof pay to Polk County an amount equal to the difference between such market value and the amount of assessment that otherwise would be imposed, prior to the time the Board directs the improvement to be made under Section 36.035(3).
- (d) Terms of installment payments, including the term of years, but not less than 3; whether installments are to be annual or semi-annual; and the rate or rates of interest, which may vary in accordance with the amount payable and term of years. The terms of payment shall be proposed by the Engineer after consultation with the Polk County Administrator. The terms shall take into account the costs of administering an installment payment program in prescribing the rate or rates of interest. [Modified by Ord. No. 00-10]

(3) After receiving the Engineer's report, the Board may modify it at a regular meeting, and shall schedule a Public Hearing to be held within 45 days after such meeting. [Amended by Ord. No.

36.030 NOTICE OF ENGINEER'S REPORT; HEARING.

- (1) The Board shall promptly send to the owner of each parcel of land proposed to be assessed:
 - (a) A summary of the Engineer's report as modified under Section 36.025(3); and
 - (b) Notice of the time and place of the hearing by the Board to receive public testimony on the report.
- (2) After hearing public testimony, the Board shall accept, reject, or modify the Engineer's report and fix assessments on each parcel to be specially benefited.

36.035 APPROVAL OR REJECTION OF PROJECT.

- (1) After the hearing described in Section 36.030, if the Engineer's report is accepted and the assessments fixed, the Board by registered or certified mail shall send to the owner of each parcel of land a notice of the proposed project and assessment amounts fixed for each parcel. The notice shall state that if the owner objects to the proposed project or assessments, the owner must state the objections in writing to the Board not later than the 20th day after mailing of the notice.
- (2) If written objections are received by the Board in a timely manner under this section signed by (a) more than 50 percent of the owners of parcels assessed, or (b) owners representing more than 50 percent of the amount of the aggregate assessment for the improvement, the Board shall declare the proposed project rejected. The same project may not be initiated within one year after the date of the Board's declaration.
- (3) If the number of objections specified in Section 36.035 is not received in a timely manner, the Board shall direct the improvement to be made subject to the ability of the County to finance the project, available resources and County priorities. [Modified by Ord. No. 00-10]

36.040 IMPROVEMENT ORDER; RECORDING; VACATION.

- (1) If the Board has directed the improvement to be made under Subsection 36.035(3), or Subsection 36.087(3) the Board shall adopt an order setting out the assessment against each parcel of land specially benefited by the improvement, and cause its order to be recorded with the County Clerk. The recorded order is notice that the land described in it is subject to a lien of an assessment in accordance with the order of the Board. The County Clerk shall index the order in the lien docket for the County.
- (2) If the proposed improvement is not undertaken within two years after the date the order was recorded, the Board by order may vacate the order for the improvement. The land described thereupon is free of the lien and any effect of the order for improvement. The Board shall cause the new order to be recorded and indexed by the County Clerk in the same manner as the order for improvement.

36.045 LIEN FOR ASSESSMENT AND INTEREST.

(1) An assessment recorded under Section 36.040, and interest thereon, is a lien on the land against which it is assessed from the date the order of the Board for the improvement was recorded by the County Clerk under Section 36.040.

(2) Each parcel of land is considered to be benefited by the improvement to the full amount of the assessment levied on it. Failing to enter the name of the owner or a mistake in the name of the owner does not in any way render void an assessment or in any way affect the lien on the land described.

(3) The lien has priority over all other liens and encumbrances whatsoever, except tax liens.

(4) On payment of an assessment in full, the Board shall cause a notice of satisfaction to be entered in the lien docket, and the parcel of land charged with the assessment thereby is discharged from the lien.

36.050 HEARING AFTER COMPLETION; PAYMENT OF COST.

(1) Within 30 days after final completion of the project, the Board shall hold a Public Hearing to receive the Engineer's report of total costs and his Certificate of Completion. Notice of the hearing shall be sent to the owner of each parcel of land assessed. The Board then shall hear any objections from the public. [Modified by Ord. No. 00-10]

(2) After hearing objections, the Board may accept the project and cause the costs of the improvement to be paid. However, the Board first may direct the Engineer to cause additional work to be done or to correct unsatisfactory work, before accepting the project.

36.055 WHEN ASSESSMENT PAYABLE; INSTALLMENTS.

(1) An assessment against a parcel of land is payable by installments as provided under Section 36.025 or Subsection 36.087(3). The first installment becomes due and payable on the 30th day after the project was accepted by the Board under Section 36.050, and such amount is delinquent after that date and bears interest at the rate per year of 1.5 times the rate of interest that would apply to the assessment if it were not delinquent.

(2) The owner of a parcel at any time may pay the entire remaining balance of an assessment without penalty, except as provided under Sections 36.070 and 36.085.

(3) ORS 311.702 to 311.735, establishing a program for deferral of special assessments for local improvements, applies with respect to assessments heretofore and hereafter levied under this chapter. [Amended by Ord. No. 88-14, Sec. 1; Ord. No. 89-3; Ord. No. 91-1, Sec. 2; Ord. No. 91-13, Sec. 3]

36.060 LIEN DOCKET; PRIORITY.

(1) Promptly after acceptance of a project under Section 36.050, the County Clerk shall enter in a docket kept for that purpose, under separate headings for each improvement, a description of

each parcel of land against which the assessment is made, with the name of the owner and the amount of the unpaid assessment. The County Clerk also shall enter in the docket orders of the Board for expenses of collection. This docket becomes a lien docket as for taxes assessed and levied in favor of the County, and for the amounts of the unpaid assessments docketed in it, with interest on the unpaid assessments at the rate per year at 1.5 times the rate of interest which would apply to the assessment if it were not delinquent, and additional amounts determined by order of the Board for expenses of collection, against each parcel, until the assessments and interest are paid. Payments so made and entered discharge the lien to the amount of payment and from that date.

(2) Unpaid assessments and interest, and amounts determined by order of the Board for expenses of collection, are a lien on each parcel in favor of the County. Such liens have priority over all other liens and encumbrances whatsoever, except tax liens. [Amended by Ord. No. 88-14, Sec. 2; Ord. No. 89-13, Sec. 4]

36.065 ADMINISTERING INSTALLMENT OPTION.

The Board shall designate an agent to administer the installment payment option, including receiving and accounting for payments. Regardless of any assistance in reminding owners of payments, each owner is responsible for making timely payments.

36.070 EFFECT OF INSTALLMENT DELINQUENCY.

Failure to pay any installment when due causes the unpaid balance to bear interest at the rate per year of 1.5 times the rate of interest which would apply to the assessment if it were not delinquent, until installment payments are current. Failure to pay any installment within 90 days after payment was due causes the entire unpaid balance of the assessment, as shown in the lien docket under Section 36.060, to become immediately due and payable. If not so paid, the assessment is delinquent from the date payment was due and is subject to foreclosure under Section 36.085. The Board by order may specify such additional amount as is necessary to reimburse the county for expenses of collection. [Amended by Ord. NO. 88-14, Sec. 3; Ord. No. 91-1, Sec. 3; Ord. No. 91-13, Sec. 5]

36.085 FORECLOSURE; EXECUTION AND SALE.

(1) At any time more than 90 days after the date an assessment for improvements is delinquent under Section 36.055 or 36.070, the Board may at the Board's option initiate foreclosure. Should the Board approve the foreclosure, the Board shall certify this fact to the County Clerk. The certificate shall contain a description of the land, the name of the person to whom currently assessed, and the amount of the assessment and interest due. The County Clerk shall issue a writ of execution thereon, directed to the Board. (Modified by Ord. No. 00-10)

(2) The Board shall proceed to collect the unpaid assessments named in the list, and amounts determined by order of the Board to reimburse the County for expenses of collection, by advertising and selling each parcel of land in the manner provided by law for the sale of real property on execution under ORS 23.450 to 23.600, except that an officer designated by the Board may perform the functions of the Sheriff. No parcel shall be advertised for sale at a sum less than the amount of the unpaid assessment plus interest thereon and the cost of advertising and sale, including, but not limited to, amounts determined for expenses of collection. However, if the Board finds it cannot sell a parcel for that sum, the Board may authorize its sale for a lesser sum.

(3) The owner of a parcel subject to foreclosure under this section may, at any time prior

to its sale, tender to the Board the amount of the unpaid assessment plus interest thereon and the costs of collection, in which case the Board shall cancel the sale and proceed under Section 36.045 (4). The owner of a parcel that has been sold may redeem such parcel pursuant to ORS 23.450 to 23.600 only upon tender of the amount of the unpaid assessment plus interest thereon and the costs of collection. As used in this subsection, "costs of collection" include but are not limited to advertising, legal, and other personnel costs. [Amended by Ord. No. 88-14, Sec. 4; Ord. No. 90-13, Sec. 1; Ord. No. 91-13, Sec. 6]

36.087 SUMMARY ROAD IMPROVEMENT PROCEDURE

(1) A citizen may request a road improvement through the Board of Commissioners. Thereafter, the Board of Commissioners shall determine if the summary road improvement procedure may be utilized based on the demonstrated financial commitment of the requesting party. The Board of Commissioners may require a petition informational meeting, or other method to determine if there is (a) strong support for the proposed improvement, and (b) whether there is adequate financial commitment from the benefiting parties to proceed.

(2) When directed by the Board of Commissioners, staff shall prepare an assessment of the proposed improvement, to include the general scope of the improvement, the estimated costs of the improvement, and the portion of the estimated costs that will be assumed by the owners of the benefited land. A recommended method of assessment will be included with the assessment report.

(3) The assessment report shall be presented to the Board of Commissioners for review, and if the Board of Commissioners wish to proceed, the assessment report shall be mailed to all of the owners of the benefited land along with a notice of the date and time for a public hearing before the Board of Commissioners to consider the improvement and affix a not to exceed assessment amount for each benefited parcel.

(4) Within thirty (30) days after the Board of Commissioners affix a not to exceed assessment amount, the owners of at least 75% of the land that would be benefited by the road improvement must sign a binding commitment affidavit obligating themselves to pay the assessment amount either in full by a date certain or by annual installments, and securing this obligation with a security interest (improvement lien) recorded against the benefited land. See Section 36.040 and Section 36.055. [Added Ord. No. 07-05.]

36.090 INTENT.

It is the intent of the Board in adopting Sections 36.005 to 36.085 that it supersede ORS 371.605 to 371.660, and laws incorporated therein by reference, only with respect to improvements described in Section 36.010(3).

Cross Reference:

Accounting Manager to collect installment payments, Order No. 88-32.