

Chapter 35.55 RCW
LOCAL IMPROVEMENTS—FILLING LOWLANDS

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Assessments and charges against state lands: Chapter 79.44 RCW.

RCW 35.55.010 Authority—Second-class cities. If the city council of any city of the second class deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade of any marshlands, swamplands, tidelands, shorelands, or lands commonly known as tideflats, or any other lowlands situated within the limits of the city, and to clear and prepare the lands for such filling, it may do so and assess the expense thereof, including the cost of making compensation for property taken or damaged, and all other costs and expense incidental to such improvement, to the property benefited, except such amount of such expense as the city council may direct to be paid out of the current or general expense fund.

If, in the judgment of the city council the special benefits for any such improvement shall extend beyond the boundaries of the filled area, the council may create an enlarged district which shall include, as near as may be, all the property, whether actually filled or not, which will be specially benefited by such improvement, and in such case the council shall specify and describe the boundaries of such enlarged district in the ordinance providing for such improvement and shall specify that such portion of the total cost and expense of such improvement as may not be borne by the current or general expense fund, shall be distributed and assessed against all the property of such enlarged district. [1994 c 81 § 57; 1965 c 7 § 35.55.010. Prior: 1917 c 63 § 1; 1909 c 147 § 1; RRS § 9432.]

RCW 35.55.020 Alternative methods of financing. If the city council desires to make any improvement authorized by the provisions of this chapter it shall provide therefor by ordinance and unless the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon the property benefited, compensation therefor shall be made from any general funds of the city applicable thereto. If the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of the special assessments shall be as hereinafter provided. [1965 c 7 § 35.55.020. Prior: 1909 c 147 § 2, part; RRS § 9433, part.]

Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.

RCW 35.55.030 Boundaries—Excepted property. Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement. If any parcel of land within the boundaries of such proposed improvement district has been wholly filled to the proposed grade elevation of the proposed fill, such parcel of land may be excluded from the lists of lands to be assessed, when in the opinion of the city council justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment but such changing of the boundaries shall be by ordinance. [1965 c 7 § 35.55.030. Prior: 1909 c 147 § 2, part; RRS § 9433, part.]

RCW 35.55.040 Damages—Eminent domain. If an ordinance has been passed as in this chapter provided, and it appears that in making of the improvement so authorized, private property will be taken or damaged thereby, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation to be made for the property to be taken or damaged for the improvement specified in the ordinance be ascertained, and conduct proceedings in eminent domain in accordance with the statutes relating to cities for the ascertainment of the compensation to be made for the taking and damaging of property, except insofar as the same may be inconsistent with this chapter.

The filling of unimproved and uncultivated lowlands of the character mentioned in RCW 35.55.010 shall not be considered as damaging or taking of such lands. The damage if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled, shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance defining the boundaries of the proposed improvement district: PROVIDED, That the city shall after the passage of such ordinance, proceed with said improvement with due diligence. If the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed

without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement. [1965 c 7 § 35.55.040. Prior: 1909 c 147 § 3; RRS § 9434.]

Eminent domain by cities: Chapter 8.12 RCW.

RCW 35.55.050 Estimates—Plans and specifications. At the time of the initiation of the proceedings for any improvement as contemplated by this chapter, or at any time afterward, the city council shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council. [1965 c 7 § 35.55.050. Prior: 1909 c 147 § 4; RRS § 9435.]

RCW 35.55.060 Assessment roll—Items—Assessment units—Installments. When such plans and specifications have been prepared and the estimates of the cost and expense of making the improvement have been adopted by the council and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after the compensation has been ascertained in the eminent domain proceedings, the city council shall cause an assessment roll to be prepared containing a list of all of the property within the improvement district which it is proposed to assess for the improvement, together with the names of the owners, if known, and if unknown the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description.

When so ordered by the council, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings together with the entire cost and expense of making the improvement, may be assessed against the property within the district subject to assessment, but the council may order any portion of the costs paid out of the current or general expense fund of the city.

The assessments shall be made according to and in proportion to surface area one square foot of surface to be the unit of assessment, except that the several parcels of land in any enlarged district not actually filled shall be assessed in accordance with special benefits: PROVIDED, That where any parcel of land was partially filled by the owner prior to the initiation of the improvement, an equitable deduction for such partial filling may be allowed.

The cost and expense incidental to the filling of the streets, alleys and public places within such assessment district shall be borne by the private property within such district subject to assessment when so ordered by the council. When the assessments are

payable in installments, the assessment roll when equalized, shall show the number of installments and the amounts thereof. The assessments may be made payable in any number of equal annual installments not exceeding ten in number. [1965 c 7 § 35.55.060. Prior: 1917 c 63 § 2; 1909 c 147 § 5; RRS § 9436.]

RCW 35.55.070 Hearing on assessment roll—Notice—Council's authority. When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his or her office and that at a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council as board of equalization may hear, consider and determine objections and protests against any assessment and may make such alterations and modifications in the assessment roll as justice and equity may require. [2009 c 549 § 2093; 1965 c 7 § 35.55.070. Prior: 1909 c 147 § 6; RRS § 9437.]

RCW 35.55.080 Hearings—Appellate review. Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council to the superior court of the county. The appeal shall be made by filing a written notice of appeal with the city clerk within ten days after the equalization of the assessments by the council. The notice of appeal shall describe the property and the objections of such appellant to such assessment.

The appellant shall also file with the clerk of the superior court within ten days from the time of taking the appeal a copy of the notice of appeal together with a copy of the assessment roll and proceedings thereon, certified by the city clerk and a bond to the city conditioned to pay all costs that may be awarded against appellant in such sum not less than two hundred dollars and with such security as shall be approved by the clerk of the court.

The case shall be docketed by the clerk of the court in the name of the person taking the appeal as plaintiff and the city as defendant. The cause shall then be at issue and shall be tried immediately by the court as in the case of equitable causes; no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant. Appellate review of the superior court's decision may be sought as in other causes. [1988 c 202 § 38; 1971 c 81 § 94; 1965 c 7 § 35.55.080. Prior: 1909 c 147 § 7; RRS § 9438.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 35.55.090 Lien—Collection of assessments. From and after the equalization of the roll, the several assessments therein shall become a lien upon the real estate described therein and shall remain a lien until paid. The assessment lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments shall be collected by the same officers and enforced in the same manner as provided by law for the collection and enforcement of local assessments for street improvements. All of the provisions of laws and ordinances relative to the enforcement and collection of local assessments for street improvements shall be applicable to these assessments. [1965 c 7 § 35.55.090. Prior: 1909 c 147 § 8; RRS § 9439.]

*Assessments for local improvements, collection and foreclosure:
Chapters 35.49, 35.50 RCW.*

RCW 35.55.100 Interest on assessments. The local assessments shall bear interest at such rate as may be fixed by the council after the expiration of thirty days after the equalization of the assessment roll and shall bear such interest after delinquency as may be provided by general ordinance of the city. [1981 c 156 § 3; 1965 c 7 § 35.55.100. Prior: 1909 c 147 § 12, part; RRS § 9443, part.]

RCW 35.55.110 Payment of cost of improvement—Interest on warrants. If the improvement contemplated by this chapter is ordered to be made upon the immediate payment plan, the city council shall provide for the payment thereof by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district and shall bear interest at a rate determined by the city council from date of issuance. If the improvement is ordered to be made upon the bond installment plan, the city council shall provide for the issuance of bonds against the improvement district. [1981 c 156 § 4; 1965 c 7 § 35.55.110. Prior: (i) 1909 c 147 § 12, part; RRS § 9443, part. (ii) 1909 c 147 § 9; RRS § 9440.]

RCW 35.55.120 Local improvement bonds—Terms. The city council shall have full authority to provide for the issuance of bonds against the improvement district fund in such denominations as the city council may provide which shall bear such rate of interest as the city council may fix. Interest shall be paid annually and the bonds shall become due and payable at such time, not exceeding ten years from the date thereof, as may be fixed by the council and shall be payable out of the local assessment district fund.

If so ordered by the council, the bonds may be issued in such a way that different numbers of the bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district mature together. [1981 c 156 § 5; 1965 c 7 § 35.55.120. Prior: 1909 c 147 § 10, part; RRS § 9441, part.]

RCW 35.55.130 Local improvement bonds—Guaranties. The city may guarantee the payment of the whole or any part of the bonds issued

against a local improvement district, but the guaranties on the part of the city, other than a city operating under the council-manager form or the commission form, shall be made only by ordinance passed by the vote of not less than nine councilmembers and the approval of the mayor in noncharter code cities that retained the old second-class city plan of government with twelve council positions, and six councilmembers and approval of the mayor in cities of the second class. In a city under the council-manager form of government, such guaranties shall be made only in an ordinance passed by a vote of three out of five or five out of seven councilmembers, as the case may be, and approval of the mayor. In a city under the commission form of government, such guaranties shall be made only in an ordinance passed by a vote of two out of three of the commissioners. The mayor's approval shall not be necessary in commission form cities. [1994 c 81 § 58; 1965 c 7 § 35.55.130. Prior: 1909 c 147 § 10, part; RRS § 9441, part.]

RCW 35.55.140 Local improvement bonds and warrants—Sale to pay damages, preliminary financing. The city council may negotiate sufficient warrants or bonds against any local improvement district at a price not less than ninety-five percent of their par value to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the eminent domain proceedings including the costs of such proceedings. In lieu of so doing, the city council may negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [1965 c 7 § 35.55.140. Prior: 1909 c 147 § 11; RRS § 9442.]

RCW 35.55.150 Local improvement fund—Investment. If money accumulates in an improvement fund and is likely to lie idle awaiting the maturity of the bonds against the district, the city council, under proper safeguards, may invest it temporarily, or may borrow it temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the money so invested or borrowed with interest thereon, whenever required for the redemption of bonds maturing against such district. [1965 c 7 § 35.55.150. Prior: 1909 c 147 § 15; RRS § 9446.]

RCW 35.55.160 Letting contract for improvement—Excess or deficiency of fund. The contract for the making of the improvement may be let either before or after the making up of the equalization of the assessment roll, and warrants, or bonds may be issued against the local improvement district fund either before or after the equalization of the roll as in the judgment of the council may best subserve the public interest.

If, after the assessment roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement, and it is found that the estimate was too high, the excess shall be

rebated pro rata to the property owners on the assessment roll, the rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan.

If it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council, after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included, except that the additional amount shall be added to the last installment of an assessment if assessments are payable upon the installment plan. The same notice shall be required for adding to the assessment roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [1965 c 7 § 35.55.160. Prior: 1909 c 147 § 13; RRS § 9444.]

RCW 35.55.170 Payment of contractor—Bonds, warrants, cash. The city council may provide in letting the contract for an improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of the work, and that the warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council may negotiate the special fund warrants or bonds against the local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds pay the contractor for the work and pay the other costs of such improvement. [1965 c 7 § 35.55.170. Prior: 1909 c 147 § 14; RRS § 9445.]

RCW 35.55.180 Reassessments. If any assessment is found to be invalid for any cause or if it is set aside for any reason in judicial proceeding, a reassessment may be made and all laws relative to the reassessment of local assessments, for street or other improvements, shall, as far as practicable, be applicable hereto. [1965 c 7 § 35.55.180. Prior: 1909 c 147 § 16; RRS § 9447.]

RCW 35.55.190 Provisions of chapter not exclusive. The provisions of this chapter shall not be construed as repealing or in any wise affecting any existing laws relative to the making of any such improvements, but shall be considered as concurrent therewith. [1965 c 7 § 35.55.190. Prior: 1909 c 147 § 17; RRS § 9448.]