

ORDINANCE NO. 29 , Series 2013
INTRODUCED BY: COUNCILOR PETE d'ORONZIO

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, APPROVING THE COST OF THE PUBLIC IMPROVEMENTS TO BE MADE IN THE SOUTH LAFAYETTE FIRE STATION SPECIAL IMPROVEMENT DISTRICT, IN THE CITY OF LAFAYETTE, COLORADO; APPROVING AND CONFIRMING THE APPORTIONMENT OF SAID COST TO EACH LOT IN THE DISTRICT; ASSESSING A SHARE OF SAID COST AGAINST EACH LOT IN THE DISTRICT; AND PRESCRIBING THE MANNER FOR THE COLLECTION AND PAYMENT OF SAID ASSESSMENTS

WHEREAS, by Ordinance No. 07, Series 2012, adopted on February 21, 2012, the City Council ("City Council") of the City of Lafayette, Colorado (the "City"), created the South Lafayette Fire Station Special Improvement District (the "District"), for the purpose of paying for public improvements to be constructed in the District; and

WHEREAS, the total cost of such public improvements has been definitely ascertained, and a statement of the proposed apportionment of costs on the real property benefited has been prepared and filed in the office of the City Administrator; and

WHEREAS, due notice as required by Section 90-34 of the Code of Ordinances of the City of Lafayette ("Code") was given that City Council would meet to hear and consider written remonstrances to such apportionment on this date, and that any such written remonstrances filed with the City on or prior to the hearing would be heard and determined by the City Council before the enactment of any ordinance assessing the cost of said improvements; and

WHEREAS, all such written remonstrances have been heard and considered by City Council at the hearing held for the purpose; and

WHEREAS, based upon the statement filed with the City Administrator, the City Council determines that the whole cost of the improvements is \$3,484,000.74, that \$1,742,000 of the cost is to be paid by the City, and that the portion thereof that should be assessed against the real property specially benefited and included within the District is 1,742,000; and

WHEREAS, City Council has apportioned a share of the cost to each lot in the District, in accordance with the benefits to be derived by said property and has prepared the assessment roll (Exhibit A, attached hereto). Council determines that the benefits specially accruing to such properties exceeds the assessments thereon; and

WHEREAS, City Council has determined to assess the cost of the improvements against such lots in the amounts set forth in the assessment roll and to direct the City Treasurer to collect amounts payable in accordance therewith;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. Confirmation of Assessment Roll. The entire cost of the District's improvements and the apportionment of the same, as set forth in the assessment roll, is in accordance with Chapter 90 of the Code hereby approved and confirmed as of November 19, 2013. The apportionment is related directly to, but not less than, the benefits which the property in the District will receive by reason of the construction of said improvements. A share of said cost is hereby assessed to and upon each lot within the District in the proportions and amounts set forth in the assessment roll, which assessment roll is attached hereto as Exhibit A and incorporated herein by this inference.

Section 2. Payment of Assessments. City Council directs the City Treasurer to collect any amount payable as an assessment under this Ordinance pursuant to Section 90-43 of the Code. The assessments shall be due and payable at the office of the City Treasurer by December 27, 2013, without demand. Property owners paying in full on or prior to December 27, 2013, will receive a 2% discount. However, at the election of the property owner, all such assessments may be paid in installments, with interest as set forth herein. On the first business day following December 27, 2013, the City Treasurer shall return the assessment roll to the City Clerk, showing all payments made thereon with the date of each payment.

Failure to pay the entire assessment by December 27, 2013, shall conclusively be considered to be an election on the part of the property owner, whether under disability or otherwise, to pay in installments. All property owners electing to pay in installments shall conclusively be considered to have consented to the improvements. Such election shall conclusively be considered to be a waiver of any right to question the power or jurisdiction of the City to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, or the validity or the correctness of the assessment.

In the event of election to pay in installments, the assessments, together with interest thereon, shall be payable in ten (10) equal annual installments, the first of which shall be due and payable on January 2, 2014, at the office of the City Treasurer. The remainder of the installments shall be due and payable successively on or before January 2nd of each year thereafter until paid in full, with interest on the unpaid principal amount calculated at the rate of 4% per annum, accruing from December 27, 2013. The tenth (10th) and last installment will be due and payable on January 2, 2023. The owner of any property not in default as to payment of any installment or portion thereof may at any time pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment.

Section 3. Deferment of Installments.

(a) The owner of a "Qualified Property," as defined below, that has elected to pay in installments may request that installment payments be deferred by providing a written request for deferment to the Finance Director on or before the date that the first installment is due. Such deferment shall be granted upon the Finance Director's determination that the request is for a "Qualified Property." The deferment of payments shall continue until the property is no longer qualifying, or until January 2, 2023, whichever occurs first. All previously due installments shall be due and payable thirty (30) days after the termination of the deferment.

(b) "Qualified Property" entitled to deferment, as provided herein, shall meet any of the following criteria:

(1) At least 25% of the fee ownership of the lot or parcel shall be in the name of an entity qualifying as a charitable organization under the provisions of Section 501(c)(3) of the United States Internal Revenue Code.

(2) The lot or parcel is not zoned, or used, for commercial, industrial, or multi-family residential uses. The rezoning of the lot or parcel to allow such uses will terminate such deferral period.

(3) There is no principal structure located upon the lot or parcel that would accommodate commercial, industrial, or multi-family residential use. The issuance of a building payment for such a structural will terminate the deferral period.

(c) Any installments deferred pursuant to the section shall accrue interest at the same rate as set forth in Section 2 above during the deferral period.

(d) City Council may, in its discretion, extend the maximal deferral period for an additional 10 year period if a property in a deferral period remains a “Qualified Property” on January 2, 2023.

Section 4. Penalty for Default or Non-Payment. Failure to pay the entire amount of any installment after 14 days past due shall cause the whole of the unpaid principal of and interest on the assessment amount to become due and collectible immediately, and the entire amount of the unpaid principal and accrued interest shall thereafter draw interest until paid at a rate of 10%.

In case of default in the payment of any installment of principal or interest when due, the City Treasurer shall cause to be advertised and noticed for 30 days any and all property, concerning which such default is suffered, for the payment of the whole of the unpaid assessments, with interest and penalties thereon. Said advertisements and sales shall be made at the same time and in the same manner under all the same conditions and penalties and with the same effect and priority as are provided by general law for sales of real estate in default of payment of general property taxes.

At any time prior to the date of sale the owner may pay the amount of all unpaid installments with interest plus all penalties and costs of collection accrued, and shall be restored to the right thereafter to pay in installments in the same manner as if the default had not been suffered.

Section 5. Assessment Lien. All assessments levied against the real property in the District, together with all interest thereon, and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of this Ordinance, a perpetual lien in the amounts assessed against each lot or tract of land. Such lien shall have priority over all other liens except general tax liens and prior assessment liens, and shall be enforced in accordance with the laws of the State of Colorado.

Section 6. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 8. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 9. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 10. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 6th DAY OF NOVEMBER, 2013.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 19th DAY OF NOVEMBER, 2013.

CITY OF LAFAYETTE, COLORADO

Carolyn Cutler, Mayor

ATTEST:

APPROVED AS TO FORM:

Susan Koster, CMC, City Clerk

David S. Williamson, City Attorney