

## **Title 3**

### **REVENUE AND FINANCE**

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## Chapter 3.08

### FUNDS

Sections:

3.08.010 Lisa Wampole Children's Library Fund.

Ordinance History: #1417

3.08.010 Lisa Wampole Children's Library Fund.

- A. Established. There shall be established by this section the Lisa Wampole Children's Library Fund ("fund").
- B. Purpose. The fund shall serve as a source for perpetuation of the memory of Lisa Wampole and her interest in the library's services for children.
- C. Board Duties. The library board ("board") shall determine the appropriate means for expenditure of fund moneys to further the reading and learning of the young patrons of the city library for books, supplies, equipment and material. The board is authorized to commemorate the memory of Lisa Wampole with an appropriate plaque honoring her and indicating the existence of the fund and its role in developing resources for children.
- D. Administration. The fund shall be administered by the board in conjunction with other duties. The board is authorized to expend sums from the fund as it deems proper and necessary to carry out the purpose of the fund.
- E. Duration. The fund shall continue until the board determines the fund's purposes have been fulfilled. Upon the board's notice that the fund is to be terminated, the city council shall take the appropriate action terminating the fund.
- F. Budget. The city manager shall prepare the necessary budget documents to carry out establishment of the fund.
- G. Other Actions. The city may from time-to-time amend this section to further the administration and carrying out of the purpose of the fund.

## Chapter 3.14

### PUBLIC CONTRACTING

#### Sections:

- 3.14.010 General Provisions
- 3.14.020 Contracting Agency/Purchasing Agent
- 3.14.030 Model Rules
- 3.14.040 Personal Service Contracts
- 3.14.050 Authority to Electronically Advertise Solicitations for Goods and Services
- 3.14.060 Authority to Electronically Advertise Solicitations for Public Improvements
- 3.14.070 Small Procurements
- 3.14.080 Sole-Source Procurements
- 3.14.090 Notice of Intent to Award Certain Contracts
- 3.14.100 Procedure for Surplus Property
- 3.14.110 Emergency Clause

Ordinance History: #947, 1209, 1544

#### 3.14.010 General Provisions

- A. Except as provided within these rules, City public contracting is governed by the Code and Model Rules.
- B. The Bandon City Council is the City's Contract Review Board (Board). Except as otherwise provided in these rules, the powers and duties of the Board under the Code and Model Rules will be exercised by the Board and the powers and duties given or assigned to contracting agencies by the Code or Model Rules will be exercised by the City Manager acting as the City's contracting agent.

#### 3.14.020 Contracting Agency/Purchasing Agent

- A. The City Manager, or his/her designee is delegated the authority to exercise all authorities granted by the Public Contracting Code, ORS 279A, 279B and 279C, and all authority granted herein, and by subsequent ordinance or resolution. The City Manager is designated as the City's Contracting Agency for purposes of contracting powers and duties assigned to the City of Bandon as a Contracting Agency.
- B. For purposes of this chapter, the Contracting Agency shall be referred to as the Purchasing Agent, who is the City Manager or his/her designee.

#### 3.14.030 Model Rules

Unless expressly provided herein, or by subsequent ordinance or resolution, the Model Rules, Divisions 46, 47, 48 and 49, adopted by the Attorney General under ORS 279A, 279B and 279C, as they now exist, and as they may be amended in the future, and in the Bandon Municipal Code, are hereby adopted as the City's public contracting rules. Words and phrases used by these rules that are defined in ORS sub-chapters 279A, 279B and 279C and in the Model Rules, have the same

meaning as defined in these sub-chapters and Model Rules. In the event that rules adopted by the Local Contract Review Board do not address a particular situation, the Model Rules apply.

### 3.14.040 Personal Service Contracts

- A. "Personal Service Contract" means a contract for personal or professional services performed by an independent contractor, primarily for the provision of services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of attorneys, accounting and auditing services, information technology services, planning and development services, artists, designers, performers, property managers and consultants. The City Manager has discretion to determine whether a particular contract or service falls within this definition. For the purposes of this section, personal service contracts do not include such contracts for architectural, engineering and land surveying services. The procedures for those contracts are found in the Model Rules, OAR 137, division 48.
- B. The following formal selection procedure will be used when the estimated payment to the contractor exceeds \$25,000.00.
1. Announcement. The City will give notice of its intent to procure personal services through any means the City deems appropriate, including contacting prospective contractors directly. Announcements will include:
    - a) A description of the proposed project.
    - b) The scope of the services required.
    - c) The project completion dates.
    - d) A description of special requirements.
    - e) When and where the application may be obtained and to whom it must be returned.
    - f) The closing date.
    - g) Other necessary information.
  2. Application. Applications will include a statement that describes the prospective contractor's credentials, performance data, examples of previous work product or other information sufficient to establish contractor's qualification for the project, references, and other information identified by the City as necessary to make its selection.
  3. Initial Screening. The City Manager will evaluate the qualifications of all applicants and select a prospective contractor or prospective contractors whose application demonstrates that the contractor is best qualified to meet the City's needs.
  4. Final Selection.
    - a) The City Manager will interview the finalists selected from the initial screening. At the City Manager's discretion, the interviews may be conducted before the Board.
    - b) After the interview process concludes, the City Manager will make the final selection. If the interviews are conducted before the Board, the Board will make the final selection.

- c) The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by the City as necessary for the City to select a contractor.
- C. The following informal procedure may be used when the estimated payment to the contractor is under \$25,000.00 or when the City Manager determines that the informal procedures will not interfere with competition among prospective contractors, reduce the quality of services or increase costs. The City Manager will contact a minimum of three prospective contractors qualified to offer the services sought. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.
- D. The City Manager may enter personal service contracts not exceeding an estimated \$5,000.00 without following the procedures under subsection B or C. However, the City Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection process.
- E. The City Manager may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services. The City must make written finds to demonstrate why the proposed contractor is the only contractor who can perform the services desired.
- F. The City Manager may select a contractor without following any procedures when conditions require immediate action to protect life or property. In such instances, the City Manager must make written declarations of the circumstances that justify the emergency appointments.

#### 3.14.050 Authority to Electronically Advertise Solicitations for Goods and Services.

- A. The City Manager is authorized to develop an "electronic procurement system" in accordance with OAR 137-047-0300(2)(b). As described in OAR 137-046-0110(15), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods and services. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. This saves the City time and money over newspaper advertisements.
- B. Prior to any development of an electronic procurement system, the City may advertise solicitations for goods and services on the internet in addition to newspaper advertisements.

#### 3.14.060 Authority to Electronically Advertise Solicitations for Public Improvements

- A. For all public improvement contracts with an estimated cost not exceeding \$125,000.00, the City Manager may electronically advertise solicitations in a manner deemed appropriate. This method of advertising will save the City time and money, may be used exclusively, and is allowed under ORS 279C.360(1).

- B. An advertisement for a public improvement contract with an estimated cost over \$125,000.00 must be published at least once in a trade newspaper of general statewide circulation, such as the *Daily Journal of Commerce*.

#### 3.14.070 Small Procurements

- A. As provided by ORS 279B.065, any procurement of goods or services not exceeding \$5,000.00 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.
- B. A small procurement contract may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than \$6,000.00.
- C. A procurement may not be artificially divided or fragmented to qualify for this section.

#### 3.14.080 Sole-Source Procurements

- A. Pursuant to ORS 279B.075(1), the City Manager is authorized to declare in writing certain goods and services to be available from only one source.
- B. The determination of a sole-source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275.

#### 3.14.090 Notice of Intent to Award Certain Contracts

- A. At least seven days before the award of a public contract solicited under a traditional invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.
- B. If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.
- C. As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.
- D. The City may give less than seven days notice of intent to award a contract if the City determines in writing that seven days is impracticable as allowed by ORS 279B.135.
- E. This section does not apply to goods and services contracts awarded under small procurements under these rules, or other goods and services contracts awarded in accordance with ORS 279B.070, 279B.075, 279B.080 or 279B.085.
- F. This section does not apply to any public improvement contract or class or public improvement contracts exempted from competitive bidding requirements.

- G. A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740 or OAR 137-049-0450, as applicable.

#### 3.14.100 Procedure for Surplus Property

- A. Surplus property is property owned by the City such as, office furniture, computers, equipment, vehicles, excluding real property, that the City Manager determines is surplus and no longer useful to the City.
- B. For surplus property deemed by the City Manager to have a value of \$5,000.00 or less, the City Manager may authorize the property to be sold, to be donated, or to be destroyed. For surplus property deemed by the City Manager to have a value of more than \$5,000.00, the City Council may authorize the property to be sold, to be donated, or to be destroyed.
- C. Surplus property may be sold through the informal solicitation of bids or through an auction, including an online auction. The City Manager has the discretion to advertise the sale of surplus property in a newspaper of city-wide circulation.
- D. City employees may purchase surplus property so long as the property is offered to the public for bid, and the employee's bid is the highest.

#### 3.13.110 Emergency Clause.

It is hereby declared that due to the effective date of March 1, 2005 of the new State public contracting rules, the City Council declares than an emergency exists. This ordinance shall become effective immediately upon its passage.

## Chapter 3.16

### SALE OF CITY PROPERTY

Ordinance History: #1349, 1391

Sections:

- 3.16.010 Alternative procedure adopted.
- 3.16.020 Class A properties.
- 3.16.030 Class B properties.
- 3.16.040 Prior procedure continued.

3.16.010 Alternative procedure adopted.

The following procedure is adopted as an alternative procedure for sale of city real property to the procedure established in ORS 221.725.

3.16.020 Class A properties.

For properties that are not defined or found to be an industrial facility as defined below, the following procedure shall be used for the sale of city real property:

- A. The council shall determine from, on an annual basis, which lots are to be sold, and establish a minimum acceptable bid price for each lot, which shall include the purchase price plus applicable recording and preliminary title report fees.
- B. At the time property is offered for sale, the council may attach additional terms or conditions upon the sale of any individual lot(s), including use restrictions, development standards, development schedules, or any other terms or conditions which the council determines to be in the best interest of the city. Such conditional sales shall contain a reversionary clause that the property shall revert to the city with forfeiture of ten (10) percent of the sales price if the conditions are not fully complied with.
- C. The property shall be offered for sale by advertising in at least the local newspaper for a minimum of two consecutive weeks. The advertisement shall include the county tax lot numbers, minimum prices, date and time bids are due, and additional terms and conditions of sale, if any. The form of bid offering will be the standard and usual form authorized for awards of contracts or as established by the council. The city reserves the right to reject any and all bids.
- D. Bids will be opened and announced at the time set. To be acceptable, each bid must be accompanied by a deposit (cash or cashier's check) equal to no less than ten (10) percent of the minimum price, which will be returned to all unsuccessful bidders upon award of the bid.
- E. Purchase offers shall be scheduled for action as an agenda item at the next regular city council meeting following the bid opening, at which time the bid will be awarded to the highest and best bidder for the amount of the bid plus applicable recording and preliminary title report fees.
- F. Any lots not sold at the meeting for which they are scheduled shall be posted by a sign indicating that they are for sale by the city. These lots may be sold at any time following that meeting, to anyone offering at least the minimum purchase price plus applicable recording and preliminary title report fees unless the council determines that the lots are no longer for sale and removes the property from the market.

- G. In addition to payment in full, the city may enter into a financing agreement under which the purchaser agrees to make equal monthly payments calculated at an annual interest rate of twelve (12) percent for a period not to exceed four years, or such other rate and terms as the city council may set by resolution. The form of security and terms of the security agreement, contract or note shall be as established by the council or city manager or city attorney.
- H. Once the purchase has been completed, the city will provide the purchaser with a quit-claim deed to the subject lot or parcel.

3.16.030 Class B properties.

The following procedure shall be used for the sale of city real property for properties that are defined as industrial facility by this chapter. "Industrial facility" means any land, any building or other improvement and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not in existence, which shall be suitable for use for industrial, commercial, manufacturing, research and development or warehousing purposes.

- A. The city council shall determine from time to time whether property defined as industrial facility shall be sold.
- B. The city may offer for sale any industrial facility using the same procedure for sale of Class A properties.
- C. The city may also sell or convey all or any part of an industrial facility at a private sale.
- D. A private sale may be negotiated by the city, and at any meeting the city may accept offers to purchase the industrial facility. The council will at any meeting explain the terms of the sale, specific purpose of the sale and the method used to determine price.
- E. Any real property owned by the city shall be deemed an industrial facility if it is determined by the council that such real property meets the definition of industrial facility as provided in this chapter.
- F. The council may attach such conditions and restrictions that it deems necessary for accomplishing the purposes of this chapter including but not limited to requirements for development of the industrial facility by the purchaser within a certain time period, reversionary clause stipulating that the industrial facility shall revert to the city if development does not occur by the purchaser within the time frame established, and such other conditions and restrictions the council finds necessary.

3.16.040 Prior procedure continued.

All sales conducted under Ordinance No. 1349 shall continue to be subject to that procedure.

## Chapter 3.20

### LOCAL IMPROVEMENT DISTRICTS

Ordinance History: #1385, 1392, 1445

#### Sections:

- 3.20.010 Short title.
- 3.20.020 Definitions.
- 3.20.030 Description of property and identification of owner.
- 3.20.040 Initiation of proceedings and report from the city engineer.
- 3.20.050 Preliminary plans and specifications.
- 3.20.060 Cost sharing for preliminary plans and specifications.
- 3.20.070 Resolution.
- 3.20.080 Notices.
- 3.20.090 Prevention by remonstrances.
- 3.20.100 Ordinance creating local improvement district.
- 3.20.110 General policy/bids.
- 3.20.120 Assessment ordinance procedures.
- 3.20.130 Assessing costs.
- 3.20.140 Lien recording--Payments over time or by cash.
- 3.20.150 Errors in assessment calculations.
- 3.20.160 Authority of city to make reassessment.
- 3.20.170 Basis for amount and method of reassessment.
- 3.20.180 Effect of reassessment--Exceptions.
- 3.20.190 Council resolution to reassess.
- 3.20.200 Publication of notice of reassessment--Contents.
- 3.20.210 Personal notice to each owner--Right to file objections.
- 3.20.220 Hearing on objections--Revision of reassessment.
- 3.20.230 Reassessment ordinance.
- 3.20.240 Lien docket entry--Crediting prior payments.
- 3.20.250 Right of purchaser at sale under prior assessment.
- 3.20.260 Review of reassessment.
- 3.20.270 Additional reassessment procedure--Time limitation.
- 3.20.280 Municipal bonds accepted as payment for assessment liens.
- 3.20.290 Assessment of public property benefited by improvements.
- 3.20.300 Public roads included in sidewalk improvement district--Assessment on property benefitted.
- 3.20.310 Abandonment of proceedings.
- 3.20.320 Curative provision.
- 3.20.330 Special provisions for sanitary and storm sewers.
- 3.20.340 Apportionment of local improvement district assessments to subsequent partitions.

#### 3.20.010 Short title.

This chapter shall be known as the "local improvement district" ordinance of the city of Bandon, Oregon.

### 3.20.020 Definitions.

As used in this chapter unless the context requires otherwise:

"Actual cost" means all direct or indirect costs incurred by the city in order to deliver goods or services or to undertake a capital construction project. The actual cost of providing goods or services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost of making a good or service available to the property or property owner, whether stated as a minimum fixed or variable amount. "Actual cost" includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, preliminary and final design, preliminary and final permits, engineering, financing costs, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirement.

"Assessment for local improvement" means any fee, charge or assessment that does not exceed the actual cost incurred by the city for design, engineering, construction and financing of a local improvement.

"City" means the city of Bandon, Oregon.

"Council" means the Bandon city council.

"Estimated assessment" means, with respect to each property to be assessed in connection with a local improvement, the total assessment that, at the time of giving notice of the assessment and the right to object or remonstrate, the city estimates will be levied against the property following completion of the local improvements. The estimate shall be based on the city's estimate at the time of the actual costs of the local improvement and the proposed formula for apportioning the actual costs to the property. Estimated assessment shall be determined by:

1. Excluding from estimated actual costs the estimated financing costs associated with any bonds issued to accommodate the payment of the assessment in installments; and
2. Including in estimated actual costs the estimated financing costs associated with interim financing of the local improvement.

"Final assessment" means, with respect to each property to be assessed in connection with a local improvement, the total assessment levied against the property following completion of the local improvement. The total assessment shall be based on the actual costs of the local improvement and the formula for apportioning the actual costs to the property.

"Financing costs" means all costs necessary or attributable to acquiring and preserving interim or permanent financing of a local improvement.

1. The financing costs may include the salaries, wages and benefits payable to employees of the city to the extent the same are reasonably allocable to the work or services performed by the employees in connection with the financing of a local improvement or any part thereof. However, as a condition to inclusion of any salaries, wages or benefits payable to employees of the city as financing costs of a local improvement or any part thereof, the city shall establish a record keeping system to track the actual work done or services performed by each employee on or in connection with such local improvement.
2. Financing costs that are to be incurred after the levy of a final assessment may be included in the final assessment based on the city's reasonable estimate of the financing costs if the city first documents the basis for the estimate and makes the documentation available to interested persons on request.

"Local improvement" means a capital construction project or part thereof undertaken by the city pursuant to the procedure to be followed in making local assessments for benefits from a local improvement upon the lots which have been benefited by all or part of the improvement:

1. Which provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
2. The costs of which are assessed against those properties in a single assessment upon completion of the project; and
3. For which the payment of the assessment plus appropriate interest may be spread over a period of at least ten (10) years by the property owner except as allowed in Section 3.20.140(G);
4. The total of all assessments for a local improvement shall not exceed the actual costs incurred by the city in designing, constructing and financing the project;
5. For purposes of this section, the status of capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the specific benefit.

"Lot" means lot, block or parcel of land.

"Manager" means the city manager of the city of Bandon.

"Owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the Coos County assessor.

"Property benefitted" means all property specifically benefitted by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the total cost of the improvement between the properties determined to be specially benefitted.

"Recorder" means the city recorder, clerk or other person or officer of the city of Bandon serving as clerk of the city or performing the clerical work of the city, or other official or employee as the governing body of the city shall designate to act as city recorder.

"Single assessment" means the complete assessment process, including pre-assessment, assessment or reassessment, for any authorized local improvement which provides the procedure to be followed in making local assessments for benefits from a local improvement upon lots which have been benefitted by all or part of the improvement.

"Special benefit only to specific properties" shall have the same meaning as "special and peculiar benefit" as that term is used in Oregon Law.

"Structure" means any temporary or permanent building or improvement to real property of any kind, which is constructed on or attached to real property, whether above, on or beneath the surface.

"Treasurer" means the appointed city official charged by law with the responsibility for acting as custodian of and investment officer for the public moneys of the city.

True Cash Value. In determining the "true cash value" of taxable property for the purpose of calculating the total amount of indebtedness which may be incurred by the state or local governments under the Oregon Constitution or laws of the state of Oregon, the "real market value," as defined in Section 11b(2)(a), Article XI, of the Oregon Constitution, may be used if and to the extent that the "real market value" does not exceed the "true cash value."

### 3.20.030 Description of property and identification of owner.

In levying, collecting and enforcing assessments for local improvement, the following shall apply:

- A. Real property may be described 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 giving the boundaries thereof by metes and bounds, or by reference to the book and page of any public record of the county where the description may be found, or by designation of tax lot number referring to a record kept by the assessor of descriptions of real properties of the county, which record shall constitute a public record, or in any other manner as to cause

the description to be capable of being made certain. 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 description of real property.

- B. If the owner of any land is unknown, the land may be assessed to "unknown owner," or "unknown owners." If the property is correctly described, no final assessment shall be invalidated by a mistake in the name of the owner of the real property assessed or by the omission of the name of the owner or the entry of a name other than that of the true owner. Where the name of the true owner, or the owner of record, of any parcel of real property is given, the final assessment shall not be held invalid on account of any error or irregularity in the description if the description would be sufficient in a deed of conveyance from the owner, or is such that, in a suit to enforce a contract to convey, employing such description a court of equity would hold it to be good and sufficient.
- C. Any description of real property which conforms substantially to the requirements of this section shall be a sufficient description in all proceedings of assessment relating or leading to a final assessment for a local improvement foreclosure and sale of delinquent assessments, and in any other proceeding related to or connected with levying, collecting and enforcing final assessments for special benefits to the property.

3.20.040 Initiation of proceedings and report from the city engineer.

- A. Improvements may be initiated by the city council upon its own motion or may be initiated by petitions to the council by the owners of a majority of the property area which will be benefitted by the proposed improvement, or by those owners representing a majority of the proposed estimated assessment if an assessment methodology is being proposed. Said petition shall set forth the location, extent and character of the desired improvement. Any petitions received by the council before the passage of the ordinance codified in this chapter which otherwise comply with the requirements for such a petition shall be deemed sufficient and action may be taken thereon as though said petition were received after passage of the ordinance codified in this chapter. Initiation of improvements may also be made by affirmative vote of the council.
- B. Once the city has approved the petition, signatures, and overall project description, the petitioner will be directed to prepare plans, specifications and cost estimates, and to submit that information for review by city staff and the city engineer. In some cases, as approved by the city, the services of the city engineer may be used to prepare the plans, specifications and cost estimates.

3.20.050 Preliminary plans and specifications.

- A. Whenever the council shall determine to proceed to make a local improvement to be paid for in whole or in part by the property benefitted, the council shall, by resolution, direct the manager to have a report prepared containing the following information:
  - 1. A description of the local improvement proposed;
  - 2. Preliminary plans and outline specification for such local improvement;
  - 3. A description of the boundaries of the proposed local improvement district;
  - 4. A just and reasonable method for apportioning the actual costs of the local improvement to the properties benefitted;
  - 5. A list of the properties benefitted by such local improvement, including the name of the owner of each property benefitted, and the address of such owner; the assessed valuation of each property, adjusted in accordance with Oregon law; and

- a statement of the amount of outstanding assessments against any property proposed to be assessed by the improvement;
  - 6. The estimated actual cost of the local improvement;
  - 7. The estimated proportionate actual cost of the local improvement to be assessed to each benefitted property;
  - 8. The estimated portion of the actual cost of the improvement to be borne by city funds.
- B. This report shall be filed in the office of the recorder when completed.
  - C. Errors or omissions in preparing, copying or submitting any of the information required in the report shall not invalidate the improvement procedure of the resulting special assessments.

3.20.060 Cost sharing for preliminary plans and specifications.

- A. The up-front costs for preparing preliminary plans, specifications and cost estimates, and for city engineer's review, are the responsibility of the property owners in the district, except for city participation as otherwise provided herein. The city may pay for the first five hundred dollars (\$500.00) of such preliminary plans and specifications' costs, and may pay fifty (50) percent of the remaining up-front preliminary costs, provided the total city contribution shall not exceed five thousand dollars (\$5,000.00). At the city's option, the city's contribution can be either cash or in-kind, such as city engineer or other staff time.
- B. All up-front costs, engineering costs, construction costs, administrative costs, legal costs, and all other project costs shall be included in the final project cost estimates, and shall be reimbursed to the parties paying those costs if the local improvement district is actually formed.

3.20.070 Resolution.

- B. After the manager's report has been filed with the recorder, and after the council has examined such report and found the same to be satisfactory, and the estimated cost and apportionment thereof to be reasonable and just, and after having found the boundaries of such improvement district to be properly determined, the council may, by resolution, propose to make such an improvement, and to create a local improvement district.
- B. The resolution shall state:
  - 1. The boundaries of such local improvement district;
  - 2. The proposed method of apportioning the estimated actual costs (estimated assessment) of the local improvement among the property owners;
  - 3. The portion of the estimated actual cost, if any, which the city shall pay;
  - 4. That such portion of the estimated actual costs (estimated assessment) which are assessed to the property owners shall be a charge and lien upon properties benefitted;
  - 5. The time and place for a public hearing;
  - 6. Direct the recorder to provide a notice of said hearing as required by Oregon law which shall state that the council shall hear and consider objections or remonstrances to the proposed improvement by any parties aggrieved thereby. The notice shall state that the council, by resolution, has proposed to create the local improvement district and include the following:

Unless those persons representing at least 66 2/3 percent of the proposed estimated assessment within said local improvement district file with the City Recorder a written objection and

remonstrance against such proposed local improvement district prior to the public hearing or present their written or oral objections at the public hearing, the Council shall be deemed to have acquired jurisdiction to order the formation of the local improvement district to conform in all particulars to the plans and specifications previously adopted. Any such objection or remonstrance shall state the objections and grounds for such objection or remonstrance.

3.20.080 Notices.

- A. Form of Notice. The recorder shall also notify the owner of each lot proposed to be assessed by registered or certified mail, or by personal delivery of the amount of the estimated assessment proposed for that property, the date by which time objections shall be filed with the recorder, and that any such objection shall state the grounds for the objection.
- B. Delivery of Notice. Whenever a notice is required to be sent to the owner of a lot affected by a proposed assessment, such notice shall be addressed to the owner or the owner's agent. If the address of the owner or the owner's agent is unknown to the recorder, the recorder shall mail the notice addressed to the owner or the owner's agent at the city where such property is located. Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional or invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been given by personal service upon the property owner, or, if personal service cannot be had, then by publication once a week for two successive weeks in a newspaper of general circulation in the city.

3.20.090 Prevention by remonstrances.

If those persons representing sixty-six and two-thirds (66-2/3) percent or more of the proposed assessment within the local improvement district file with the recorder a written objection or remonstrance against the proposed improvement, such remonstrance shall be a bar to any further proceeding in the making of such improvement for a period of six months.

3.20.100 Ordinance creating local improvement district.

- A. Public Hearing. After the public hearing, if the local improvement district has not been objected to by those persons representing at least sixty-six and two-thirds (66 2/3) percent of the proposed assessment, the council may provide for the creation of the local improvement district by ordinance. This ordinance shall describe the improvement(s) to be made and the boundary of the local improvement district. The ordinance shall also provide that the estimated assessments against the properties benefitted shall be charges and liens against the property. The city may enforce collection of such assessments as provided by Oregon law.
- B. Adoption Process. In creating the local improvement by ordinance, the council shall consider the objections or remonstrances made and the reasons stated for them. The council may adopt, correct, modify or revise the estimated assessments, and shall determine the amount of the estimated assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement and shall by ordinance spread the assessments. The estimated assessment lien shall continue until the time the estimated assessments become a final assessment and shall be recorded in the city's lien docket as provided for final assessments in Section 3.20.140(l) and recorded with the county clerk as provided by law.

In examining special and peculiar benefits, the council shall determine if previous assessments have been made for the same kind of improvements proposed. If a corner lot has been previously assessed for the same kind of improvement, and if the actual benefit afforded the corner lot is not commensurate with the proposed estimated final assessment, the council may reduce or partially credit such amount as the council finds equitable.

- C. Plans. The ordinance shall also direct the manager to have detailed plans and specifications of the local improvement prepared and that, when appropriate, the city invite bids for construction of the local improvement. All bidders shall be required to submit a certified check or bid bond in an amount equal to five percent of their bid, and the contractor to whom the award is made shall submit a performance bond in the amount of his or her bid at the time the contract is awarded. All bonds shall be with bonding companies doing business in Oregon and given under Oregon law. Bonds shall incorporate the term of the plans and specifications and must be approved by the city attorney as to form.

3.20.110 General policy/bids.

- A. It shall be the general policy of the city to call for bids for making local improvements and to award the bid to the lowest responsible bidder. However, this general policy shall not prohibit the council from providing that the city construct the local improvements rather than private contractors.
- B. Separate Bids. In the event that more than one local improvement district shall be advertised for bids at the same time, all local improvement districts shall be bid separately.
- C. Low Bid. The council shall have the authority to accept the lowest responsive aggregate bid, individual bids or combination thereof, which is in the best interest of the city for all of the local improvement districts bid at the same time, and allocate the proposed amount of the total cost to each district separately.
- D. Council Discretion. The council may reject any and all bids submitted.

3.20.120 Assessment ordinance procedures.

- A. Initial Assessments. If the city council determines that the local improvement district shall be created the city council shall provide for the assessment or estimated assessment of the benefitted properties, and for the apportionment of the assessment or estimated assessment to the individual lots within the local improvement district by ordinance by one of the following methods:
  - 1. Actual cost of the local improvement; or
  - 2. The estimated actual cost of the local improvement.
- B. Notice. The recorder shall prepare the assessment or estimated assessment to the respective lots within the assessment district. Notice of such assessment or estimated assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of assessment or estimated assessment proposed on that property and shall fix a date by which time objections and the grounds for objections shall be filed with the recorder. Any objection shall state the grounds thereof. The city council shall consider such objections and may adopt, correct, modify or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments.
- C. Actual Cost. In determining the assessments or estimated assessments for the local improvement the council shall use the actual cost or estimated actual costs.

- D. Lien. The assessment ordinance shall provide that the assessments or estimated assessments against the benefited properties shall be a lien against the assessed properties and that the city may enforce collection of such assessments as provided by Oregon law.
- E. Estimated Cost. If the initial assessment has been made on the basis of estimated actual cost, and upon the completion of work the cost is found to be greater or less than the estimated cost, the city council shall make an assessment for the correct actual costs. Proposed assessments upon the respective lots within the assessment district for the proportionate share of the change shall be made; and notice shall be sent; opportunity for objection shall be given; such objections shall be considered; and determination of the assessment against each particular lot, block or parcel of land shall be made as in the case of the estimated assessment; and the assessment spread by ordinance.

3.20.130 Assessing costs.

The council shall consider the following in assessing costs of the local improvement:

- A. The use of any just and reasonable method of determining the extent of the district boundaries consistent with the benefits derived, the Oregon Constitution and Oregon Laws;
- B. The use of any method of apportioning the actual cost or estimated actual cost to be assessed is just and reasonable among the properties determined to be specially benefitted and consistent with the Oregon Constitution and Oregon Laws;
- C. Payment by the city of all or any part of the actual cost or estimated actual cost of any improvement when, in the opinion of the council, on account of topographical or physical conditions, unusual or excessive use by the general public, or other character of the local improvement, or when the council otherwise believes it to be just and reasonable;
- D. Other available means of financing the estimated actual cost of the local improvement, including federal or state grants-in-aid, electric, water and sewer service fees or other types of services or 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, subject to the constraints of the Oregon Constitution and Oregon laws, in its discretion, levy assessments for local improvement districts hereunder according to benefits to cover any part of the costs, subject to the constraints of the Oregon Constitution and Oregon laws, of the local improvement not covered by such means;
- E. Notwithstanding subsections A-D of this section, in all instances in which an improvement district contains at least forty (40) percent unimproved property (property on which no residential or commercial building is located) the council shall first obtain an assessment figure by dividing the total improvement costs by the number of front feet, amount of square feet, or other equitable method determined by the council located within the district, then reduce the resulting figure for each parcel of improved property by one-half. The reduced figure shall be the assessment on the already improved property. The total of the one-half reduced figure shall then be added to the base assessment of the unimproved properties on a proportionate basis by dividing this total by the number of front feet, amount of square feet, or other equitable method determined by the council within the district of unimproved property. The resulting sum shall be the assessment on the unimproved property. The assessments obtained following the procedure set forth in this subsection may be reduced further if assessments are also made on other benefitted property not abutting the improvements constructed.

3.20.140 Lien recording--Payments over time or by cash.

- A. If the city has proceeded to cause any local improvement to be constructed or made within the corporate limits of the city, and has determined the final assessment for the local improvement against the property benefitted thereby or liable therefor according to applicable law, the city shall cause notice of the final assessment to be published. The notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed and the final assessment for each lot. In addition, the notice shall state that the owner of any property to be assessed shall have the right to make application to the city for payment of the final assessment in installments as provided in this chapter and if not, that payment in full is due within thirty (30) days after the date of the adoption of the ordinance. A copy of the notice shall be mailed or personally delivered to the owner of each lot to be assessed.
- B. The owner of any property to be so assessed, at any time within ten (10) days after notice of final assessment is first published, may file with the recorder a written application to pay:
  - 1. The whole of the final assessment in installments; or
  - 2. If part of the final assessment has been paid, the unpaid balance of the final assessment in installments.
- C. The installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual costs of the local improvement.
- D. The application shall provide that the applicant agrees to pay the final assessment over a period of not less than ten (10) years (except as provided in subsection G of this section) or more than thirty (30) years and according to such terms as the city may provide. The city may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than ten (10) years and according to such terms as the city may provide.
- E. The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the city on all unpaid assessments, together with an amount, determined by the city, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under Oregon law, including but not limited to legal, printing and consultant's fees.
- F. The application shall also contain a statement, by lots or blocks, or other convenient description, of the property of the applicant assessed for the improvement.
- G. In connection with the final assessments for any local improvement, the city may establish a procedure by which an owner of any property to be assessed may irrevocably effect in writing to have the final assessment levied for a number of years less than ten (10), which shall be determined by the city. The written election shall:
  - 1. Be signed by the owner or a duly authorized representative of the owner;
  - 2. Contain a description of the assessed property and the local improvement for which the assessment is made; and
  - 3. Contain a statement by the owner acknowledging that the improvement is a local improvement as described in this chapter, that payment of the final assessment against the properties benefitted by the local improvement plus interest may be spread over at least ten (10) years and that, notwithstanding any provision of law, the owner consents to make payments over a period of not less than ten (10) years and to have the assessment levied on the benefitted property accordingly.
- H. The election of this section shall be recorded in the bond lien docket for the local

improvement to which the assessment relates and with the county clerk as provided by law. From and after the time at which the written election is so recorded, it shall be valid and binding upon all subsequent owners of the property or any part thereof.

- I. When a bond lien docket is made up, as provided in Oregon law, as to the final assessments for any local improvement, the city may by ordinance or resolution authorize the issue of its bonds pursuant to the applicable provisions of Oregon law.
- J. The bonds authorized to be issued under this section may be issued in an amount equal to the unpaid balance of all final assessments for the related local improvements including the amounts necessary to fund any debt service reserve and to pay any other financing costs associated with the bonds.
- K. Security for Bonds.
  - 1. All bonds issued pursuant to this section, including general obligation bonds, shall be secured by and be payable from the installments of final assessment with respect to which the bonds were issued.
  - 2. In the ordinance or resolution authorizing the issuance of the bonds, the city may:
    - a. Provide that installments of final assessments levied with respect to two or more local improvement shall secure a single issue of bonds;
    - b. Reserve the right to pledge, as security for any bonds thereafter issued pursuant to this section, any installments of final assessments previously pledged as security for other bonds issued pursuant to this section.
  - 3. All bonds shall be secured by a lien on the installments of final assessments with respect to which they were issued. The lien shall be valid, binding and fully perfected from the date of issuance of the bonds. The installments of final assessments shall be immediately subject to the lien without the physical delivery thereof, the filing of any notice or any further act. The lien shall be valid, binding and fully perfected against all persons having claims of any kind against the city or the property assessed, whether in tort, contract or otherwise, and irrespective of whether such persons have notice of the lien.
- L. As additional security for any bonds issued under this section, including general obligation bonds, the city may pledge or mortgage, or grant security interests in, its revenues, assets and properties, and otherwise secure and enter into covenants with respect to the bonds, as provided in Oregon law.
- M. Authority of City to Borrow/Interim Financing.
  - 1. The city shall have the power, at any time and from time to time after the undertaking of a local improvement has been authorized, to borrow money and issue and sell notes for the purpose of providing interim financing for the actual costs of the local improvement.
  - 2. Notes authorized under this subsection may be issued in a single series for the purpose of providing interim financing for two or more local improvements.
  - 3. Notes authorized under this subsection shall mature not later than one year after the date upon which the city expects to issue bonds for the purpose of providing permanent financing with respect to installment payments of the final assessments for the local improvements.
  - 4. Any notes authorized under this subsection may be refunded from time to time by the issuance of additional notes or out of the proceeds of bonds issued pursuant to this section. The notes may be made payable from the proceeds of any bonds to be

issued under this section to provide permanent financing or from any other sources from which the bonds are payable.

5. The city may pledge the payment of bonds authorized to be issued under this section with respect to the local improvements for which the notes provide interim financing.
- N. The city may create, within the Bancroft Bond Redemption Fund maintained by the city as required by Oregon law, separate accounts for separate issues of bonds or notes issued as provided in Oregon law, and may pledge any amounts deposited in the separate accounts to specific issues of bonds or notes without pledging the amounts to any other issues of such bonds or notes.
- O. The installments due and payable under an assessment contract shall be due and payable periodically as the city shall determine but shall not be due and payable over a term in excess of thirty (30) years. Each installment is due and payable with interest as described under subsection T of this section.
- P. The installments and interest are payable to the treasurer by the property owner whose application to pay the cost of the local improvement by installments has been filed as provided in Oregon law.
- Q. The amount of each installment (percentage of the total final assessment) shall be determined by the city and shall be as appears by the bond lien docket described in Oregon law. Each installment shall be due and payable with the accrued and unpaid interest on the unpaid balance of the final assessment amount at the rate per annum determined by the city under Oregon law.
- R. The first payment shall be due and payable on the date that the city shall determine, and subsequent payments shall be due and payable on subsequent periodic dates thereafter as shall have been determined by the city.
- S. If the owner neglects or refuses to pay installments under Oregon law as they become due and payable for a period of one year, then the city may, by reason of the neglect or refusal to pay the installments, and while the neglect and refusal to pay continues, pass a resolution:
  1. Giving the name of the owner then in default in the payment of the sums due;
  2. Stating the sums due, either principal or interest, and any unpaid late payment penalties or charges;
  3. Containing a description of the property upon which the sums are owing; and
  4. Declaring the whole sum, both principal and interest, due and payable at once.
- T. The city may then proceed at once to collect all unpaid installments and to enforce collection thereof, with all unpaid late payment penalties and charges added thereto, in the same manner in which delinquent property taxes are collected under applicable law or, in the case of a city, in the same manner as street and sewer assessments are collected pursuant to the terms of the City Charter.

### 3.20.150 Errors in assessment calculations.

Claimed errors in the calculation of final assessments shall be called to the attention of the manager prior to any payment on account. The manager shall check the calculation and report his or her findings to the council. If an error has been made the council shall amend the final assessment ordinance to correct the error. Upon the enactment of such an amendment by the council, the recorder shall make the necessary correction in the lien docket and shall send by registered or certified mail to the owner a corrected notice of the assessment.

3.20.160 Authority of city to make reassessment.

Whenever all or part of any assessment for improvements was or is declared void or set aside for any reason or its enforcement refused by any court by reason of jurisdictional or other defects in procedure, whether directly or by virtue of any court decision or when the council is in doubt as to the validity of all or part of any such assessment by reason of such defects in procedure, the council may by ordinance make a new assessment or reassessment with respect to all or part of the original assessment upon the lots which have been benefitted by all or part of the improvement to the extent of their respective and proportionate shares of the full value of such benefit.

3.20.170 Basis for amount and method of reassessment.

The reassessment shall be based upon the special and peculiar benefit of the improvement to the respective lots at the time of the original making of the improvement. The amount of the reassessment shall not be limited to the amount of the original assessment but the property embraced in the reassessment shall be limited to property embraced in the original assessment. However, property on which the original assessment was paid in full shall not be included in the reassessment. Interest from the date of delinquency of the original assessment may be added by the council to the reassessment in cases where the property was included in the original assessment, but such interest shall not apply to any portion of the reassessment that exceeds the amount of the original assessment. The reassessment shall be made in an equitable manner as nearly as may be in accordance with the law in force at the time the improvement was made, but the council may adopt a different plan of apportioning benefits or exclude portions of the district when in its judgment it is essential to secure an equitable assessment. Credit shall be allowed on the new assessment for all payments made on the original assessments.

3.20.180 Effect of reassessment--Exceptions.

The reassessment, when made, shall become a charge upon the property upon which it is laid notwithstanding the omission, failure or neglect of any officer, body or person to comply with the provisions of the Charter or law connected with or relating to the improvement and original assessment or any previous reassessment, and although the proceedings of the council or the acts of any officer, contractor or other person connected with the improvement or assessment may have been irregular or defective, whether such irregularity or defect was jurisdictional or otherwise. The reassessment shall not be made in case of any improvement wherein a remonstrance sufficient in law to defeat it has been duly filed prior to the making of the improvement.

3.20.190 Council resolution to reassess.

The proceedings required by the Charter or other law for making of the original assessment are not required with reference to the making of a reassessment. The reassessment shall be initiated by adoption of a resolution designating the improvement as to which a reassessment is contemplated, describing the boundaries of the district that the council contemplates for the reassessment and directing the recorder or other person to prepare a proposed reassessment upon the property included within the district. After passage of such resolution, the recorder or other person shall prepare the proposed reassessment and file it in the office of the recorder.

3.20.200 Publication of notice of reassessment--Contents.

After the proposed reassessment is filed in the recorder's office, the recorder shall give notice thereof by not less than four successive publications in a newspaper published in the city and, if there is no newspaper published in the city, in a newspaper to be designated by the council.

The notice shall show that the proposed reassessment is on file in the office of the recorder, giving the date of the passage of the resolution authorizing it, the boundaries of the district or a statement of the property affected by the proposed reassessment, and specifying the time and place where the council will hear and consider objections to the proposed reassessment by any parties aggrieved thereby.

3.20.210 Personal notice to each owner--Right to file objections.

The recorder shall, within five days after the date of first publication of the notice, mail or personally deliver to the owner of each lot affected by the proposed reassessment, or to the agent of such owner, a notice of the proposed reassessment, stating the matters set out in the printed notice and also the amount proposed to be charged against the lot. If the address of the owner or the owner's agent is unknown to the recorder, he or she shall mail the notice addressed to the owner or owner's agent at the city where such property is located. Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional or invalidate the reassessment proceedings. The owners of any property included in the description of the printed notice, or any person having an interest in that property, may, within ten (10) days from the day of last insertion of the printed notice, file in writing with the recorder objections against the proposed reassessment.

3.20.220 Hearing on objections--Revision of reassessment.

At the time and place appointed in the notice the council shall hear and determine all objections filed under Section 3.20.210. The council may adjourn the hearing from time to time, and correct, modify or revise the proposed reassessment or set it aside and order the making of a new proposed reassessment. However, if the proposed reassessment is corrected or revised so as to increase the amount proposed to be charged against any property, such reassessment shall not be made until after a new notice has been given as stated in Section 3.20.210 to the owners of property against which the amount of assessment is proposed to be thus increased. The publication of the notice may be for not less than two successive insertions in a newspaper as provided in Section 3.20.200, and the time when action may be taken thereon may be not less than five days after the date of last insertion. If the proposed reassessment is set aside and a new apportionment ordered, notice shall be given of the new apportionment in the manner stated in Sections 3.20.200 and 3.20.210 and action taken thereon as provided in Section 3.20.210 and this section.

3.20.230 Reassessment ordinance.

When the council has determined what in its judgment is a fair, just and reasonable reassessment, it shall pass an ordinance setting out and making the reassessment. The reassessment so made shall be deemed to be regular, correct, valid and just, except as it may be modified under Section 3.20.220.

3.20.240 Lien docket entry--Crediting prior payments.

When the reassessment is duly made it shall be entered in the city lien docket. All provisions for bonding and paying by installments shall be applicable, and such city liens shall be enforced and collected in the manner provided for collection of liens for an original improvement. All sums paid upon the former assessment or any previous reassessment shall be credited to the property on account of which it was paid and as of the date of payment.

3.20.250 Right of purchaser at sale under prior assessment.

In cases where a sale was made under the original assessment or any previous

reassessment, with reference to such improvement, and the property was not redeemed from the sale, the purchaser at the sale is subrogated to the rights of the city with reference to the property upon such reassessment if the purchaser waives all penalties and interest, except such interest as may be provided for on the reassessment, and delivers up for cancellation any certificate or other evidence of the sale. If a deed was issued at the sale, the grantee therein, his or her heirs, executors, administrators, successors or assigns, shall execute a deed of resale and quit claim of all right, title and interest in the property under such sale to the owner of the property and deliver the deed to the recorder, so that the owner's title may be cleared of the sale. The recorder shall act as escrow holder of such certificate or other evidence of sale and of such deed pending completion of reassessment. If the reassessment is not completed, the recorder shall return the certificate or other evidence of sale and the deed to the person delivering it to him or her. If the reassessment is completed, the certificate or other evidence of sale shall be canceled and placed on file in the office of the recorder and the deed shall be delivered to the owner of the property specified therein.

If any such purchaser, his or her heirs, executors, administrators, successors or assigns fails to comply with this section, he or she is not entitled to subrogation. In any event, the amount of subrogation shall not exceed the amount which has been paid to the city on such sale, together with interest at the rate established under this chapter from the date of sale until the date of payment. This amount is to be paid by the city to the purchaser, his or her heirs, executors, administrators, successors or assigns if and when the city collects the amount of the reassessment against the property.

3.20.260 Review of reassessment.

Notwithstanding any of the provisions of Sections 3.20.160 through 3.20.250, owners of any property against which a reassessment for local improvements has been imposed may seek a review thereof under the provisions of Oregon law.

3.20.270 Additional reassessment procedure--Time limitation.

No proceedings for making a reassessment shall be instituted after twenty (20) years from the date when the first assessment was entered on the lien docket.

3.20.280 Municipal bonds accepted as payment for assessment liens.

General obligation bonds, or interest coupons attached, or both, of the city are authorized for payment of all or any part of local improvement district liens, interest or penalties, payable to the city.

3.20.290 Assessment of public property benefitted by improvements.

- A. Whenever all or any part of the cost of public improvements is to be assessed to the property benefitted thereby, benefitted property owned by the city, county, school district, state and any political subdivision thereof shall be assessed in the same as private property and the amount of the assessment shall be paid by the city, school district, county or state, as the case may be, provided that the costs of the improvements are, in any given case, of the type that may be bonded under this chapter.
- B. In the case of property owned by the state, the amount of the assessment shall be certified by the city treasurer and filed with the executive department as a claim for reference to the legislative assembly in the manner provided by Oregon law unless funds for the payment

of the assessment have been otherwise provided by law.

3.20.300 Public roads included in sidewalk improvement district--Assessment on property benefitted.

The city, in addition to powers granted by law or Charter, may include in any sidewalk improvement district within the city all county roads or state highways or any part thereof which are located within the improvement district. It may cause to be built on the county roads or state highways or portions thereof within the improvement district, sidewalks for pedestrian travel, and may assess the cost thereof upon the property benefitted thereby, in the manner provided by the Oregon Constitution, Oregon laws, City Charter and/or this chapter.

3.20.310 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. 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 or her assigns, or legal representatives.

3.20.320 Curative provision.

No improvement assessment shall be invalid by reason of a failure to give, in any report, on the proposed assessment, in the assessment ordinance, in the lien docket or elsewhere in the proceedings, the name of the owner of any lot or other 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 herein above specified, unless it appears that the assessment as made, insofar as it affects the person complaining, is unfair and unjust, and the city council shall have power and authority to remedy and correct all such matters by suitable actions and proceedings.

3.20.330 Special provisions for sanitary and storm sewers.

When the council finds that it is necessary for the public health, welfare and safety and the individual property owner(s) have failed to meet routine obligations of owners that a sanitary or storm sewer, or both, be constructed in an area within the city of Bandon, the city shall, to the extent allowed by the Oregon Constitution and Oregon laws, proceed to form an improvement district and construct the improvements as provided in this chapter whether or not such an improvement district has previously been rejected at any time by remonstrances. Property owners shall have no right of remonstrance. Those parts of this chapter which are in conflict with this section shall not apply.

3.20.340 Apportionment of local improvement district assessments to subsequent partitions.

The city shall apportion a local improvement district assessment imposed upon a single tract or parcel of real property among all the parcels formed from a subsequent partition or other division of that tract or parcel provided that the following conditions are met:

- A. That the subsequent partition or division is in accordance with applicable law and is consistent with all applicable comprehensive plans as acknowledged by the land conservation and development commission;
- B. That the proportionate distribution of local improvement district assessment authorized may be made whenever the local improvement district assessment remains wholly or partially unpaid, and full payment or installment payment is not due;

- C. That the city has been requested to make such local improvement district assessment by an owner, mortgagee, or lien holder of a parcel of real property that was formed from the partition or other division of the larger tract of real property against which the local improvement district assessment was originally levied:
  - 1. The city shall not apportion the local improvement district assessment unless the applicant files a true copy of the deed, mortgage or instrument evidencing the applicant's ownership or other interest in the parcel, or
  - 2. The applicant supplies the city with the recording data necessary for the city to find such deed, mortgage or other instrument evidencing the applicant's ownership or other interest in the parcel in the Coos County deed records;
- D. Any and all local improvement district assessments made by the city pursuant to this chapter shall be in the form of an ordinance of the city and shall contain the following information at a minimum:
  - 1. The description of each parcel of real property affected by the apportionment,
  - 2. The amount of the assessment levied against each parcel,
  - 3. The owner of each parcel,
  - 3. Such additional information as the city may require to keep a permanent and complete record of the assessments and the payments thereon;
- E. A copy of the ordinance allowing a local improvement district assessment shall be filed with the city recorder who shall make any necessary changes or entries in the city's lien docket;
- F. When the local improvement district assessment is being paid in installments and if the local improvement district assessment is apportioned among smaller parcels of real property under this provision, the installments remaining unpaid shall be prorated among those smaller parcels so that each parcel shall be charged with the percentage of the remaining installment payments equal to the percentage of the unpaid assessment charged to the parcel upon apportionment;
- G. The city shall require each applicant to pay a deposit as established by the city before beginning the local improvement district assessment apportionment process and the city shall require all applicants to reimburse the city for the actual costs as defined in this chapter incurred by the city in apportioning local improvement district assessments under this provision;
- H. The city's public works director shall establish regulations for the equitable apportionment of local improvement district assessments pursuant to this chapter.

## Chapter 3.24

### NEIGHBORHOOD IMPROVEMENT DISTRICTS

Ordinance History: #1436

Sections:

- 3.24.010 Purpose of neighborhood improvement districts.
- 3.24.020 Initial petition.
- 3.24.030 Plans, specifications and cost estimates.
- 3.24.040 District formation and assessments.
- 3.24.050 Construction.
- 3.24.060 Billing payment of assessments and property liens.

#### 3.24.010 Purpose of neighborhood improvement districts.

Citizens within the city shall be allowed to petition for the formation of a voluntary neighborhood improvement district for the purpose of undertaking infrastructure improvement projects within their neighborhood, which neighborhood improvement districts shall conform to the following rules, regulations and procedures.

#### 3.24.020 Initial petition.

- A. An individual shall first circulate a petition of intent to form a neighborhood improvement district, obtaining signatures of one hundred (100) percent of the property owners who intend to voluntarily pay for the proposed improvements. Said petition shall then be submitted to the city and shall be accompanied by a map showing the boundaries of the proposed district, a list containing the names and addresses of all property owners within the proposed district, and a description of the proposed work.
- B. The city will review the initial petition to determine if adequate signatures have been obtained. The city will also review the proposal to ensure that the work is appropriate, conforms with all applicable city plans, policies and regulations, and will not negatively impact surrounding properties.

#### 3.24.030 Plans, specifications and cost estimates.

- A. Once the city has approved the petition, signatures and overall project description, the petitioner will be directed to prepare plans, specifications and cost estimates, and to submit that information for review by city staff and the city engineer. In some cases, as approved by the city, the services of the city engineer may be used to prepare the plans, specifications and cost estimates.
- B. The up-front costs for preparing plans, specifications and cost estimates, and for the city engineer's review, are the responsibility of the property owners in the district, except for city participation as otherwise provided herein. The city will pay for the first five hundred dollars (\$500.00) of such costs, and will pay fifty (50) percent of the remaining up-front costs,

provided the total city contribution shall not exceed five thousand dollars (\$5,000.00). At the city's option, the city contribution can be either cash or in-kind, such as city engineer or other staff time.

- C. All up-front costs, engineering costs, construction costs, administrative costs, legal costs and all other project costs shall be included in the final project cost estimate, and shall be reimbursed if the neighborhood improvement district is actually formed.

3.24.040 District formation and assessments.

- A. Once the plans, specifications and cost estimates have been finalized, the city will calculate the assessments which must be paid by each property within the district. Such assessments will equitably distribute the project costs and may be based on square footage, front footage, equal payment per buildable parcel or other appropriate methodology.
- B. Based on the nature and extent of the project, and subject to the availability of funds, the city may contribute partial funding to the project if it is determined to be in the best interest of the city to participate. At the city's option, the city contribution can be either cash or in-kind, such as staff time, labor, materials or equipment.
- C. The city will mail a payment agreement to each property owner within the proposed district specifying the amount of their assessment. In order to actually form the neighborhood improvement district, each property owner will have to sign, notarize and return that agreement.

3.24.050 Construction.

- A. The city will secure construction financing from either its own resources or outside sources as necessary.
- B. The city will either contract for undertaking the project, undertake the project itself, or complete the project through a combination of both.

3.24.060 Billing, payment of assessments and property liens.

- A. Once the project has been completed, the city will prepare a final cost accounting and will bill each participant in accordance with their agreement.
- B. If payment is not made within thirty (30) days of billing (or as otherwise provided if a separate payment agreement has been entered into), then the amount stated on the agreement, together with the cost of recording the agreement and interest at the rate of one percent per month on the outstanding balance, will become a lien on the property and the city will proceed to record the lien.



## Chapter 3.28

### SPECIAL ASSESSMENT DISTRICTS

Ordinance History: #1009

#### Sections:

- 3.28.010 Definitions.
- 3.28.020 Election to defer assessment installment.
- 3.28.030 Prerequisites for deferral.
- 3.28.040 Claim for deferral.
- 3.28.050 Duties of city treasurer.
- 3.28.060 Annual notice to claimant--Penalty.
- 3.28.070 Maturity of deferred payments.
- 3.28.080 Time for payment.
- 3.28.090 Election of spouse to continue deferral.
- 3.28.100 Deferral under provisions of ORS 311.666 to 311.735.
- 3.28.110 Limitations on effect of deferral.

#### 3.28.010 Definitions.

For the purposes of this chapter the following definitions shall apply:

"Assessment" means an amount assessed to defray the cost of land improvement of the nature described in Chapter 3.20 and for which an application to bond has been signed and filed with the city.

"Assessment installment" means the unpaid installments of the assessment due and payable within the calendar year for which application for deferral is made, including interest attributable to the installment. If the amount of the assessment installment or any prior installment thereof has become delinquent at the time of the initial application for deferral, the term includes any delinquent installments and interest, penalties or costs imposed as a result of the delinquency, which amounts shall be considered payable in the calendar year for which claim for deferral is made.

"Homestead" means the principal dwelling, either real or personal property, owned or being purchased by the person claiming a deferral and the contiguous land area upon which it is located; provided, however, that such homestead shall not be a land area greater than sixteen thousand two hundred (16,200) square feet and there shall not be included with such dwelling, as a homestead, a lot area more than seventy (70) feet in width from the drip line of the dwelling.

#### 3.28.020 Election to defer assessment installment.

- A. A person may elect to defer payment of the amount of an assessment installment applicable to the person's homestead. The election shall be made by filing an application with the city treasurer. The effect of filing the claim shall be to defer the assessment installment until the same becomes due and payable under the provisions of Section 3.28.070.
- B. A person eligible to claim deferral of assessment installments under the provisions of ORS 311.702 to 311.735 shall not be eligible to file for deferral under the terms of this chapter.

#### 3.28.030 Prerequisites for deferral.

In order to qualify for deferral of assessment installments the person filing the claim for his or her homestead must meet the following requirements at the time the application for deferral is

filed and thereafter so long as payment of assessment installments is deferred:

- A. The household income of the person filing shall not be more per year than the following:

N o .	o f	H o u s e h o l d
	Dependents	Income
1		\$ 9,700
2		11,050
3		12,450
4		13,850
5		14,700
6		15,550
7		16,450
8, 9 and 10		17,300

For the purposes of this chapter, household income shall include income from any source of any person claimed as a dependent on the application;

- B. The total net assets of the persons filing and all claimed dependents does not exceed three times the applicable income level. For the purposes of this section, net assets shall not include the value of the homestead;
- C. The person claiming the deferral, by himself or herself or together with the person's spouse, must own the fee simple estate of the homestead or be purchasing the same under a recorded instrument of sale;
- D. Application may not be made for deferral of assessment installments in the event that the homestead has been sold at foreclosure sale for delinquent installments.

3.28.040 Claim for deferral.

The claim for deferral shall be by application, the form of which shall be approved by motion of the council. The initial claim shall have attached thereto a copy of the application to bond installment payments. The initial claim may be filed at any time during the calendar year for which the deferral is first claimed. A claim for any subsequent year shall be filed on or before December 15th of the year preceding the year for which the claim is filed. The claim must be verified.

3.28.050 Duties of city treasurer.

- A. Eligibility for deferral being established, the city treasurer shall:
1. Show an entry upon the bond lien docket indicating that deferral has been established;
  2. Maintain a record showing the amounts of assessment installments deferred, the accrual dates thereof, the interest rate thereon and any other pertinent information the city treasurer may deem appropriate.
- B. The deferred assessment installment or installments, plus accrued interest thereon, shall continue to be a lien against the property in the same manner as any other unpaid assessments but shall not be subject to foreclosure as long as they are deferred.
- C. Interest shall accrue in the amount of each assessment installment as of the deferral date at the rate of seven percent per annum.

3.28.060 Annual notice to claimant--Penalty.

- A. On or before September 1<sup>st</sup> of each year, the city treasurer shall send a notice to each person who has claimed deferral of assessment installment for local improvement amounts

for the current year. The city treasurer shall give notice by an unsealed postcard or other form of mail sent to the residence address of the person as shown in the claim for deferral filed for the current year. The notice shall be substantially in the following form:

\*\*\*\*\*

To: (name of person)

If you want to defer the collection of assessment installments and interest on your homestead for the calendar year beginning on January 1, \_\_\_\_, you must file a claim for deferral not later than November 15, \_\_\_\_, with the city treasurer.

If you fail to file your claim for deferral on or before November 15th, \_\_\_\_, you will have to pay assessment installments and interest on your homestead payable during the calendar year beginning January 1, \_\_\_\_.

\*\*\*\*\*

- B. If a person who has claimed deferral of assessment installments for local improvement for the current year does not file a claim for deferral on or before November 15<sup>th</sup>, the city treasurer shall send, not later than December 1<sup>st</sup>, a notice to the person by registered mail to the residence address of the person as shown on the claim for deferral filed for the current year. The notice shall be in substantially the following form:

\*\*\*\*\*

To: (name of person)

You did not file a claim for deferral of assessment installments and interest for your homestead for the calendar year beginning January 1, \_\_\_\_\_. Consequently, you will have to pay the assessment installments and interest payable during the calendar year beginning January 1, \_\_\_\_.

If you wish to defer collection of the assessment installments and interest for the calendar year beginning January 1, \_\_\_\_, on your homestead, you must file a claim for deferral with the city treasurer not later than December 15, \_\_\_\_, and pay a penalty of \$15.00.

\*\*\*\*\*

- C. If the person files a claim for deferral after November 15th and on or before December 15th and pays a penalty of fifteen dollars (\$15.00), the homestead with respect to which the deferral is claimed shall be subject to deferral for the calendar year next beginning. The fifteen dollar (\$15.00) penalty shall be receipted and accounted for in the records of the appropriate local office and shall be paid into the general fund of the local governmental unit.
- D. Failure to receive the notices provided for in this section is not a defense in any proceeding for the collection of the special assessment for local improvement. The city treasurer and other local government officers are not personally liable for failure to give the notices.

3.28.070 Maturity of deferred payments.

Subject to the provisions of Section 3.28.090, all deferred assessment installments, including interest, mature and are payable when:

- A. The person claiming the deferral on his or her homestead dies;

- B. The homestead to which the deferral applies is sold, or a contract of sale is entered into, or some person other than the person who claimed the deferral becomes owner of the property;
- C. The homestead to which the deferral applies is no longer the homestead of the person who filed the claim, except in the case of absence from the homestead by reason of health.

3.28.080 Time for payment.

- A. When any of the circumstances listed in Section 3.28.070 occurs, the amounts of deferred assessment installments, including accrued interest, shall be due and payable by August 15th of the year following the calendar year in which the deferred payments matured under the provisions of Section 3.28.070.
- B. If the amounts due are not paid as provided in this section, they shall be deemed delinquent and the homestead shall be subject to foreclosure as otherwise provided for unpaid local improvement assessments.

3.28.090 Election of spouse to continue deferral.

Notwithstanding the provisions of Section 3.28.070, the spouse of the person claiming deferral may elect to continue the homestead deferral if:

- A. The spouse files an application for deferral and is eligible for deferral under the provisions of this chapter;
- B. The application shall be filed before the date deferred payments are due and payable. Claim for deferral being established, it shall continue as to previous and future deferred assessment installments subject to the provisions of this chapter.

3.28.100 Deferral under provisions of ORS 311.666 to 311.735.

In the event that deferral of a homestead shall be granted under the provisions of this chapter and the claimant shall thereafter establish deferral of the same property under the provisions of ORS 311.666 to 311.735, then the deferral granted under this chapter shall continue without re-application until the payments become due as provided by Section 3.28.070.

3.28.110 Limitations on effect of deferral.

- A. Nothing contained in this chapter is intended or shall be construed to prevent the collection of real property taxes; prevent the deferral of real property taxes; or affect any provision of any mortgage or other instrument relating to the homestead.
- B. Nothing contained in this chapter is intended or shall be construed to waive or subrogate any lien rights the city may have.
- C. The provisions of this chapter shall not prevent collection of undeferred delinquent assessment installments. Upon determination that undeferred delinquent assessment installments are due and in default, then all assessments against the property, including any deferred under the provisions of this chapter, shall be due and payable and subject to collection.

## Chapter 3.32

### TRANSIENT OCCUPANCY TAX

Ordinance History: #966,1134, 1143, 1148, 1266, 1463

#### Sections:

3.32.010	Title.
3.32.020	Definitions.
3.32.030	Tax imposed.
3.32.040	Collection of tax by operator--Rules for collection.
3.32.050	Operator's duties.
3.32.060	Exemption.
3.32.070	Registration of operator--Form and contents--Execution.
3.32.080	Due date - Returns and payments.
3.32.090	Penalties and interest.
3.32.100	Deficiency determinations--Fraud, evasion and operator delay.
3.32.110	Redetermination.
3.32.120	Lien.
3.32.130	Operators' refunds.
3.32.140	Administration.
3.32.150	Appeal board - Procedure.
3.32.160	Earmarked funds.
3.32.170	Violations.
3.32.180	Penalty.

#### 3.32.010 Title.

This chapter shall be known as the "transient room tax ordinance" of the city of Bandon.

#### 3.32.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

"Accrual accounting" means the operator enters the rent due from a transient on his or her records when the rent is earned, whether or not it is paid.

"Cash accounting" means the operator does not enter the rent due from a transient on his or her records until rent is paid.

"City council" means the city council of the city of Bandon, Oregon.

"Motel" means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling, lodging or sleeping purposes, and includes any motel, inn, tourist home or house, hotel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.

"Occupancy" means the use or possession, or the right to the use or possession, for lodging or sleeping purposes, of any room or rooms in a hotel, or space in a mobile home or trailer park or portion thereof.

"Operator" means the person who is proprietor of the motel in any capacity. Where the operator performs his or her functions through a managing agent of any type or character other than

an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

"Tax" means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he or she is required to report his or her collections.

"Transient" means any individual who exercises occupancy or is entitled to occupancy in a motel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a motel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

#### 3.32.030 Tax imposed.

A transient shall pay a tax in the amount of six percent of the rent charged for the privilege of occupancy in a motel in the city. The tax constitutes a debt owed by the transient to the city, and the debt is extinguished only when the tax is remitted by the operator to the city. The transient shall pay the tax to the operator at the time rent is paid. The operator shall enter the tax into the record when rent is collected if the operator keeps records on the cash accounting basis and when earned if the operator keeps records on the accrual accounting basis. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, rent paid or charged for occupancy shall exclude the sale of goods, services or commodities. The operator may retain, for collection of the tax and maintenance of records, five percent of the tax collected for remittance to the city.

#### 3.32.040 Collection of tax by operator--Rules for collection.

- A. Every operator renting rooms in this city, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the city.
- B. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

#### 3.32.050 Operator's duties.

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's

records and any receipt rendered by the operator. No operator of a motel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this chapter.

3.32.060 Exemption.

No tax imposed under this chapter shall be imposed upon:

- A. Any occupant for more than thirty (30) successive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
- B. Any occupant whose rent is of a value of eight dollars (\$8.00) per day or less. The council may from time to time change the dollar amount of this exception by resolution;
- C. Any person who rents a private home, vacation cabin or like facility, from any owner who rents such facilities incidentally to his or her own use thereof;
- D. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people;
- E. Any occupant who has made a reservation for any period during the month of August, 1976, and the reservation has been confirmed on or before July 21, 1976;
- F. Bed & Breakfast establishments may take a deduction of up to fifteen percent (15%) off their taxable rents, as an offset for the cost of the full breakfasts required to be included within their overnight lodging fees by state licensing regulations and the city of Bandon zoning regulations.

3.32.070 Registration of operator--Form and contents--Execution.

Every person engaging or about to engage in business as an operator of a motel in this city shall register with the city recorder on a business license form provided by the city recorder. Operators engaged in business at the time the ordinance codified in this chapter is adopted must register not later than thirty (30) calendar days after passage of the ordinance codified in this chapter. Operators starting business after the ordinance codified in this chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his or her place or places of business, and such other information to facilitate the collection of the tax as the city recorder may require.

3.32.080 Due date--Returns and payments.

- A. The tax imposed by this chapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the city recorder on a quarterly basis within twenty-five (25) days after the close of the following quarters: First quarter, January 1st to March 31st; second quarter, April 1st to June 30th; third quarter, July 1st to September 30th; fourth quarter, October 1st to December 31st; and are delinquent within ten (10) days thereafter. The return shall be filed in such form as the city recorder may prescribe by every operator liable for payment of tax.
- B. Returns shall show the amount of tax collected or otherwise due for the related period. The city recorder may require returns to show the total rentals upon which tax was collected or otherwise due.
- C. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the city recorder at his or her office either by personal delivery

or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

- D. The city recorder, if he or she deems it necessary in order to ensure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods. (Ord. 966 § 8, 1976)

3.32.090 Penalties and interest.

- A. Original Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this chapter prior to delinquency, shall pay a penalty of ten (10) percent of the amount of the tax due in addition to the amount of the tax.
- B. Continued Delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen (15) percent of the amount of the tax due, plus the amount of the tax and the ten (10) percent penalty first imposed.

3.32.100 Deficiency determinations -- Fraud, evasion and operator delay.

- A. Deficiency Determination. If the city recorder determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession, or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 3.32.090.
  - 1. In making a determination, the city recorder may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 3.32.090.
  - 2. The city recorder shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail.
- B. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax, or to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the city recorder shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the city recorder has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, the city recorder shall proceed to determine and assess against such operator the tax and interest provided for by this chapter. In case such determination is made, the city recorder shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the city recorder of any fraud, intent to evade, or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the city recorder has given notice thereof.

3.32.110 Redetermination.

- A. Any person against whom a determination is made under Section 3.32.100, or any person directly interested, may petition for a redetermination and redemption and refund within the time required in Section 3.32.100. If a petition for redetermination and refund is not filed within the time required in Section 3.32.100, the redetermination becomes final at the expiration of the allowable time.
- B. If a petition for redetermination and refund is filed within the allowable period, the city administrator shall reconsider the determination, and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give advance notice of the time and place of the hearing. The city administrator may continue the hearing from time to time as may be necessary.
- C. The city administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.
- D. The order or decision of the city administrator upon a petition for redetermination of redemption and refund becomes final in ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Bandon city council within the ten (10) days after service of such notice.
- E. No petition for redetermination of redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

3.32.120 Lien.

The tax imposed by this chapter, together with the interest and penalties herein provided, and the filing fees paid to the county clerk of Coos County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter, shall be and, until paid, remain a lien from the date of its recording with the county clerk of Coos County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the motel of an operator within Bandon, and may be foreclosed on and sold, as may be necessary to discharge said lien, if the lien has been recorded with the county clerk of Coos County, Oregon. Notice of lien may be issued by the city recorder or his or her deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the county clerk of Coos County, Oregon, and a copy sent to the delinquent operator.

3.32.130 Operators' refunds.

Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously collected or received by the city recorder, it may be refunded; provided, a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the city recorder within three years from the date of payment. If the claim is approved, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his or her administrators, executors or assignees. All refunds shall be charged to the transient occupancy tax revenue account of the city's general fund.

3.32.140 Administration.

- A. Records Required from Operators--Form. Every operator shall keep guest records of room sales and accounting books and records of the room sales. All records shall be retained by the operator for a period of at least three years after they come into being.



- B. Examination of Records--Investigations. The city recorder may examine, during normal business hours, the books, papers and accounting records relating to room sales of any operator, after notification to the operator liable for the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- C. Confidential Character of Information Obtained--Disclosure Unlawful. It is unlawful for the city recorder or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any person, except:
  - 1. The disclosure to, or the examination of records and equipment to, another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter; or collecting taxes imposed hereunder;
  - 2. The disclosure, after the filing of a written request to that effect, to the taxpayer himself or herself, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties; further provided, however, that the city attorney approves each such disclosure and that the city recorder may refuse to make any disclosure referred to in this paragraph when in his or her opinion the public interest would suffer thereby.

3.32.150 Appeal board--Procedure.

- A. A transient occupancy tax appeal board is created to be composed of members of the Bandon city council. Four members of the board shall constitute a quorum. The board shall keep a record of its transactions and shall not, at any time, receive any compensation for their services on the board.
- B. The board shall have the power to:
  - 1. Hear and determine appeals of orders or decisions of the city administrator made upon petitions for redetermination of tax. The board may affirm, modify or reverse such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. In the review of the city administrator's decision or order, the board may take such evidence and make such investigation as it may deem necessary and give notice of its determinations. Such determination shall become final ten (10) days thereafter, and shall thereupon become due and payable, subject to interest and penalties;
  - 2. Modify or disapprove all forms, rules and regulations prescribed by the city recorder in the administration and enforcement of this chapter;
  - 3. Make such investigations as it deems advisable regarding the imposition and administration of the transient occupancy tax.

3.32.160 Earmarked funds.

Such portion of the net annual proceeds as the council shall determine in each budget year shall be paid over to the Bandon Chamber of Commerce in support of its advertising budget.

3.32.170 Violations.

It is unlawful for any operator or other person so required to fail or refuse to register as required herein or to furnish any return required to be made, or fail or refuse to furnish a

supplemental return or other data required by the city recorder, or to render false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due required by this chapter.

3.32.180 Penalty.

Violation of this chapter is punishable in accordance with Chapter 1.16.

## Chapter 3.36

### UTILITY USERS TAX

Ordinance History: #987, 1108, 1167

#### Sections:

- 3.36.010 Definitions.
- 3.36.020 Utility tax imposed.
- 3.36.030 Illegal tax.
- 3.36.040 Tax collection.
- 3.36.050 Time of payment.

#### 3.36.010 Definitions.

For the purposes of this chapter:

"City" means the city of Bandon.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, trust, receiver, trustee, agency or any group or combination acting as a unit.

#### 3.36.020 Utility tax imposed.

There is imposed a tax upon every person using a city-operated utility service (sewer, water and electric) within the city. The tax imposed by this section shall be at the rate of ten (10) percent of the billed charges for such service and shall be paid by the person paying for such service.

#### 3.36.030 Illegal tax.

Nothing in this chapter shall be construed as imposing a tax upon any person when the imposition of such a tax upon that person would be in violation of law.

#### 3.36.040 Tax collection.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

- A. The taxes imposed by this chapter shall be collected insofar as practicable at the same time as, and along with, the charges made in accordance with regular billing practice of the city. Except in those cases where a utility user pays the full amount of said charges but does not pay any portion of a tax imposed, or where a utility user has notified the city that he or she is refusing to pay a tax imposed which the city is required to collect, if the amount paid by a utility user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.
- B. The duty to collect tax from a utility user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of the ordinance codified in this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

3.36.050 Time of payment.

The tax imposed by this chapter shall be collected from the utility user at the time payment is made for utility charges. Any such tax shall be deemed a debt due the city and, if not paid when due, collected in the same manner as utility charges as may from time to time be directed by the council.

## Chapter 3.40

### REAL PROPERTY COMPENSATION

Ordinance History: #1534

Sections:

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**3.40.010**     **Definitions.** As used in this ordinance, the following words and phrases mean:

City Manager. The City Manager of the City of Bandon, or his or her designee.

Claim. A claim filed under Ballot Measure 37.

Exempt Land Use Regulation. A land use regulation that:

1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
2. Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
3. Is required in order to comply with federal law;
4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
5. Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Land Use Regulation. Includes:

1. Any statute regulating the use of land or any interest therein;
2. Administrative rules and goals of the Land Conservation and Development Commission;
3. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
4. Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
5. Statutes and administrative rules regulating farming and forest practices.

Owner. The present owner of the property, or any interest therein.

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by the city that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

**3.40.020 Claim Filing Procedures.**

- A. A person seeking to file a claim under this ordinance must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the city manager's office, or another city office if so designated by the city manager.
- B. A claim shall include:
  - 1. The name(s), address(es) and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;
  - 2. The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired;
  - 3. The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;
  - 4. The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon; and
  - 5. Copies of any leases or Covenants, Conditions and Restrictions applicable to the real property, if any, that impose restrictions on the use of the property.
- C. Notwithstanding a claimant's failure to provide all of the information required by subsection (2) of this section, the city may review and act on a claim.

**3.40.030 City Manager Investigation and Recommendation.**

- A. Following an investigation of a claim, the city manager shall forward a recommendation to the city council that the claim be:
  - 1. Denied;
  - 2. Investigated further;
  - 3. Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
  - 4. Evaluated with the expectation of the city acquiring the property by condemnation.
- B. If the city manager's recommendation is that a claim be denied, and no elected official informs the city manager within 14 days that the official disagrees, then the city manager may deny the claim. If an elected official objects, then the city manager shall wait an additional seven days to see whether two more elected officials object to the proposed denial. If they do, then the city manager shall schedule a work session with the city council. If not, the city manager may deny the claim.

**3.40.040 City Council Public Hearing.**

The City Council shall conduct a public hearing before taking final action on a recommendation from the city manager. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject

property, and neighborhood groups or community organizations officially recognized by the city council whose boundaries include the subject property.

**3.40.050 City Council Action on Claim.**

- A. Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the city council shall:
  - 1. Determine that the claim does not meet the requirements of Measure 37 and this Ordinance, and deny the claim; or
  - 2. Adopt a Resolution with Findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.
- B. The city council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property.
- C. If the city council removes or modifies the challenged land use regulation, it may, at its discretion, put back into effect with respect to the subject property, all of the land use regulations in effect at the time the claimant acquired the property.

**3.40.060 Claim Processing Deposit.**

The city manager shall maintain a record of the city's costs in processing a claim, including the costs of obtaining information required by this ordinance which a property owner does not provide to the city. Following final action by the city on the claim at the local level, the city manager shall send to the property owner a bill for the actual costs, including staff and legal costs, that the city incurred in reviewing and acting on the claim.

**3.40.070 Severability**

If any phrase, clause or part of this ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and effect.

**3.40.080 Emergency Clause**

Due to the passage of Measure 37 at the General Election on November 2, 2004 with an effective date 30 days thereafter, the City Council declares it is necessary for the preservation of the public health, welfare and safety for this ordinance to have immediate effect. Therefore, this ordinance shall become effective immediately upon its passage by the City Council.