

ORDINANCE 365

AN ORDINANCE PROVIDING FOR THE CREATION OF LOCAL IMPROVEMENT DISTRICTS TO COMPLY WITH ARTICLE XI, SECTION 11 B. OF THE OREGON CONSTITUTION; CHAPTER 459 OF THE 1991 OREGON LAWS; AND CHAPTER 902 OF THE 1991 OREGON LAWS

RECITALS:

WHEREAS, the voters of the State of Oregon by initiative petition on November 6, 1990, adopted Article XI Section XI b of the Oregon Constitution which included constitutional definitions for local improvements; and

WHEREAS, the legislative assembly of the State of Oregon, during the 1991 Oregon Legislative Session, enacted Chapters 459 and 902 of the Oregon Laws, effective September 29, 1991, which adopted enabling legislation for cities to continue the process of Local Improvement Districts; and

WHEREAS, the Drain City Council desires, to the full extent allowed by the Oregon Constitution and the full extent authorized by the Oregon Legislative Assembly, to continue its authority to create Local Improvement Districts.

WHEREAS, Chapter X, Section 34 of Drain's City Charter allows the procedure for fixing, levying, and collecting special assessments against real property for public Improvements or other public services to be governed by general ordinance.

THEREFORE, THE COMMON COUNCIL OF THE CITY OF DRAIN ORDAINS AS FOLLOWS:

SECTION 1. SHORT TITLE: This Ordinance shall be known as the "Local Improvement District" ordinance of the City of Drain.

SECTION 2. DEFINITIONS: As used in this Ordinance unless the context requires otherwise, the following shall be defined as:

2.1 "Actual Costs" shall mean all direct or indirect cost incurred by the City in order to deliver goods and services or to undertake a capital construction project. The "actual cost" of providing goods or services to a property or a property owner includes the cost, or an allocated portion of the total amount of the actual cost, of making a good or service available to the property owner, whether stated at a minimum, fixed, or variable amount. "Actual Cost" includes, but is not limited to, the cost of labor, materials, attorney fees, supplies, equipment rental, property acquisition,

permits, financing, engineering, administration, 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 payments of amounts necessary to meet debt service coverage requirements.

2.2 “Assessment for Local Improvement” means any fee, charge or assessment that does not exceed the actual costs incurred by the City for design, construction and financing of a local improvement.

2.3 “Bond Indebtedness” means any formally executed written agreement representing a promise by the City to pay to another a specific sum of money, at a specified date or dates at least one year in the future.

2.4 “Capital Construction” means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, which is expected to have useful life of more than one year, and includes, but is not limited to:

2.4.1 Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.

2.4.2 Acquisition and or installation of machinery or equipment, furnishings or materials which will become an integral part of a structure.

2.4.3 Activities related to capital construction, such as planning, design, acquisition of interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licences or other services connected with construction.

2.4.4 Acquisition of existing structures, or legal interest in structures, in conjunction with the capital construction.

2.5 “Capital Improvements” means: (1) the grading, graveling, paving, or other surfacing of any street; or opening, laying out, widening, extending, altering, changing the grade of or constructing any street, (2) the construction of sidewalks, (3) the construction or upgrading of any storm drains, (4) water improvements, (5) sanitary sewer Improvements, or (6) any other public improvement authorized by the Council.

2.6 “City” means the City of Drain, Oregon.

2.7 “City Staff” includes the use of contracted consultants and engineers as may be required.

2.8 “Council” means the Drain City Council.

2.9 “Estimated Assessment” means:

2.9.1 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 cost of the local improvement and the proposed formula of apportioning the actual cost to the property.

2.9.2 Estimated assessments shall be determined by excluding from the actual cost the cost of financing associated with any bonds issued to accommodate payments or installments.

2.10 “Exempt Bond Indebtedness” Exempt Bonded indebtedness also includes bonded indebtedness authorized by specific provision of the Oregon Constitution; and bonded indebtedness incurred, or to be incurred for capital construction or capital improvements that is issued as a general obligation of the City after November 6, 1990, with the approval of the electors of the City; and bonded indebtedness incurred or to be incurred for capital constructions or capital improvements that is issued as a general obligation of the City after November 6, 1990, with the approval of the electors of the City.

2.11 “Exempt Bonded Indebtedness” means, with respect to each property to be assessed in connection with a local improvement, the total amount which will be levied against the property following completion of the local improvement.

2.12 “Final Assessment” means, with respect to each property to be assessed in connection with a local improvement. The final assessment shall comprise of the total amount levied against the property following completion of the local improvement. The total assessment shall be based on the actual cost of the local improvement and the formula for apportioning the actual cost to the property.

2.13 “Financing” means all cost necessary or attributable to acquiring and preserving interim or permanent financing of a local improvement.

2.13.1 The cost of financing may include the salaries, wages and benefits payable to the employees of the City for work performed in connection with the financing of a local improvement or any part thereof. However, as a condition to inclusion of salaries, wages or benefits payable to employees of the City as financing the cost 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 in connection with a local improvement.

- 2.13.2 Financing cost that are 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 cost.
- 2.14 "Local Improvement" is a capital construction project or, part of a capital construction project, undertaken by the City pursuant to the procedure of forming local assessments on properties benefited, in whole or in part, from the local improvement:
- 2.14.1 which provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
 - 2.14.2 the cost of which are assessed against those properties in a single assessment upon the completion of the project; and
 - 2.14.3 for which the payment of the assessment plus the appropriate interest may be spread over a period of at least ten years by the property owner.
 - 2.14.4 The total of all assessments for a local improvement shall not exceed the actual cost incurred by the City in design, constructing and financing the project.
 - 2.14.5 The status of capital construction project as a local improvement is not impacted by the accrual of a general benefit to properties located outside an improvement district as opposed to the specific benefit of properties located within an improvement district.
- 2.15 "Lot" means lot, block or parcel of land.
- 2.16 "Manager" means the City Administrator of the City of Drain or Administrator's designee.
- 2.17 "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 Douglas County Assessor.
- 2.18 "Property Benefited" means all property specifically benefited by a Local Improvement District. The relative extent of such benefit is to be determined by any just and reasonable method of apportionment of all or a portion the total cost of the improvement between properties determined to be specifically benefited.
- 2.19 "Recorder" means the recorder, clerk or other person or officer of the City of Drain

serving as a clerk of the City or performing clerical work of the City, or other official or employee as the governing body of the City shall designate to act as recorder.

2.20 "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 which have been benefitted by all or part of the improvement.

2.21 "Special Benefit Only to Specific Properties" shall have the same meaning as "special and peculiar benefit" as that term is used in Oregon Law (ORS 223.389).

2.22 "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, or beneath the surface.

2.23 "Treasurer" means the City official, however designated, charged by law with the responsibility for acting as custodian of and investment officer for the public moneys of the City.

2.24 "True Cash Value" in determining "true cash value" of taxable property for the purpose of calculating the amount of indebtedness which may be incurred by the State or Local Government under Oregon Constitution or laws of the State of Oregon, "the real market value" as defined in Section 11 b (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."

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

2.25.1 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 the 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.

2.25.2 If the owner of any land is unknown, the land may be assessed as "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 owner, or the owner of record, of any parcel of real property is given, the final assessment shall not be held invalidated 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.

2.25.3 Any description of real property which conforms substantially to the requirements of this section shall be as 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.

SECTION 3: PETITION FOR FORMATION: The formation of a local improvement district may be initiated by petition submitted to the City Recorder. All petitions must be submitted on forms provided by the City.

3.1 Prior to circulating a petition, a Chief Petitioner must be identified on forms provided by the City.

3.2 The Chief Petitioner shall agree to pay a fee of six hundred and forty dollars (\$640.00), or such other amount and schedule that the City may, from time to time, set by resolution for advance financed public improvements.

3.3 All plans and specifications, as outlined in Section 4 through Section 4.9 of this ordinance, shall be filed with the City Recorder before the circulation of the petition.

3.4 All plans and specifications filed with the City Recorder must be attached to the petition prior to circulation and made available for public viewing at the Drain City Hall during all regular business hours.

3.5 After a petition has been circulated and submitted to the City Recorder, the City shall have ninety (90) days to complete the activities outlined in Section 5 and Section 6 of this ordinance.

SECTION 4. PLANS AND SPECIFICATIONS: Whenever the Council shall determine to proceed, upon its own motion or upon the petition of the owners equal to one-half of the property that benefits specifically from the improvement, to make any street, sewer, sidewalk, drain, water line or other public improvement to be paid for in whole or in part by a special assessment according to the benefits, then the council shall, by motion, direct city staff to make a report for

such a project. Unless the Council shall direct otherwise, such report shall contain the following matters:

- 4.1 A description of the local improvement proposed.
- 4.2 Preliminary plans and outlined specifications for such local improvement.
- 4.3 A description of the boundaries of the proposed local improvement district.
- 4.4 A just and reasonable method for apportioning the actual cost of the local improvement to the properties benefited.
- 4.5 A list of the properties benefited for such local improvement, including the name of the owner of each property benefitted, and the address of such owners; 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 for the improvement.
- 4.6 The estimated actual cost of the local improvement.
- 4.7 The estimated proportionate actual cost of the local improvement to be assessed to each benefited property.
- 4.8 The estimated portion of the actual cost of the improvement to be borne by City funds, if any.
- 4.9 This report shall be filed with the office of the Recorder when completed and available for public inspection during all regular business hours.

SECTION 5. ASSESSING: The Council shall consider the following in assessing cost of the local improvement :

- 5.1 The use of any just and reasonable method of determining the extent of the local improvement district boundaries consistent with the benefits derived, the Oregon Constitution, and Oregon State Law.
- 5.2 The use of any method of apportioning the actual cost among the properties to be specifically benefited which is just and reasonable and consistent with the Oregon Constitution and the Oregon Laws.
- 5.3 Payment by the City of all or any portion of the actual cost or estimated actual cost of any improvement. If, in the opinion of the Council, there is a general public benefit which will result from the public improvement, or when the Council otherwise believes it to be just and reasonable, the City may contribute funds towards the local improvement.
- 5.4 Other available means of financing the estimated actual cost of the local improvement, including federal or state grants-in-aid, sewer services 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, in its discretion, levy assessments for local improvement districts hereunder according to benefits to cover any part of the cost, subject to the constraints of the Oregon Constitution and Oregon Laws, of the local improvement not covered by such means.

SECTION 6. RESOLUTION: After the staff report has been filed with the City, and after the Council has examined such report and found the report to be satisfactory, and the estimated cost thereof to be reasonable and just, and after having found the boundaries of such improvements district to be properly determined, the Council may, by resolution, propose to make such an improvement, and create a local Improvement District. Unless those persons representing at least two-thirds of the proposed estimated assessment within the 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 within seven (7) days following the public hearing, the Council may proceed to order the formation of the local improvement district as proposed in the plans and specifications previously adopted or as may be amended by the Council following the hearing. Any such objection or remonstrance shall state the grounds for such objections or remonstrance. The resolution shall state:

- 6.1 The boundaries of such local improvement district.
- 6.2 The proposed method of apportioning the estimated actual cost (estimated assessments) of the local improvement among the property owners.
- 6.3 The portion of the estimated actual cost, if any, which the City shall pay.
- 6.4 That such portion of the estimated actual cost (estimated Assessment) which are assessed to the property owners shall be a charge and a lien upon the properties benefited.
- 6.5 The time and the place of the public hearing to consider public comments and objections to the proposed local improvement district.
- 6.6 Direct the recorder to provide notice of the 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 a local improvement district and include the following:

“Unless those persons representing at least two-thirds (2/3) of the proposed estimated assessment within the 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 within seven (7) days following the public hearing, the Council may proceed to order the formation of the local improvement district as proposed in the plans and specifications previously adopted or as may be amended by the Council following the hearing. Any such objection or remonstrance shall state the grounds for such objections or remonstrance.”

SECTION 7. NOTICES: 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. Notices shall be mailed no less than ten (10) days prior to the date set

7.1 **Delivery of Notice.** Whenever a notice is required to be sent to the owner or a lot affected by a proposed assessment such notice shall be addressed to the owner or his agent. If the address of the owner or his agent is unknown to the Recorder, the Recorder shall mail the notice addressed to the owner or his 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 of Drain.

SECTION 8. PREVENTION BY REMONSTRANCES: If no later than seven (7) days following the public hearing, those persons representing two-thirds (2/3) or more of the proposed assessment within the proposed 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 the period of six month.

SECTION 9. ORDINANCE CREATING LOCAL IMPROVEMENT DISTRICT: After the public hearing and the time for filing remonstrances, if the local improvement district has not been objected to by those persons representing two thirds 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 benefited shall be charges and liens against the property. The City may enforce collection of such assessments as provided by Oregon Law.

9.1 **Adoption Process.** In creating the local improvement 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 proposed assessment or estimated assessments 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.

9.2 **Plans.** The Ordinance shall also direct staff to have detailed plans and specifications of the local improvement prepared and that, when appropriate, the City solicit bids for construction of the local improvement pursuant to Ordinance 324.

SECTION 10. ASSESSMENT ORDINANCE PROCEDURES: If the City Council determines that the local improvement district shall be created the Council shall provide for the assessment or estimated assessment of the benefited 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: (1) actual cost of the local improvement , (2) the estimated actual cost of the local improvement.

10.1 **Notice.** The Recorder shall prepare the assessment or the estimated assessment to the respective lots within the assessment district and file it with the appropriate City office. 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 amount of the assessment or the 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 the 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.

10.2 **Actual Cost.** In determining the assessment or the estimated assessments for the local improvement the Council shall use the actual cost as defined in this Ordinance.

10.3 **Lien.** The assessment ordinance shall provide 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 assessment as provided by Oregon Law.

10.4 **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 Council shall make an assessment for the corrected actual cost. Proposed assessments upon the respective lots within the assessment district for the proportionate share of the change shall be made; and notices 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.

SECTION 11. LIEN RECORDING: PAYMENTS OVER TIME OR BY CASH: 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 Ordinance. A copy of the notice shall be mailed or personally delivered to the owner of each lot to be assessed.

11.1 The owner of any property to be assessed, at any time within ten days after notice of final or estimated assessment is first published, may file with the recorder a written application to pay: (1) the whole of the final or estimated assessment installments; or (2) if part of the final estimate has been paid, the unpaid balance of the final assessment in installments.

11.2 **Installment.** At the option of the City, an installment application may be filed after the notice of the final assessment has been published.

11.2.1 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 district for which the final assessment is levied and in apportionment of the actual cost of the local improvement.

11.2.2 The application shall provide that the applicant agrees to pay the final or established assessment over a period not less than ten years nor more than thirty 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 years and according to the terms as the City may provide.

11.2.3 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 the amount, determined by the City, sufficient to pay a proportionate part of the cost of administering the bond assessment program and in issuing the bonds authorized under Oregon Law (ORS 223.235), including but not limited to legal, printing and consultants fees.

11.2.4 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.

11.3 In connection with the final assessments for any local improvement, the City shall establish a procedure by which an owner of any property to be assessed may irrevocably elect in writing to have the final or estimated assessment levied for a number of years less than ten, 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, and (2) contain a description of the assessed property and the local improvement for which the assessment is being made, and (3) contain a statement by the owner acknowledging that the improvement for the local improvement as described in this Ordinance, that the payment of final assessment against the properties benefited by the local improvement plus interest may be spread over at least ten years and that, notwithstanding any provision of law, the owner consents to make payments over a period of less than ten years and to have the assessment levied on the benefited property accordingly.

11.4 The election of this section shall be recorded in the lien docket for the local improvement to which the assessment relates. 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 thereof.

11.5 When the lien docket is made up, as provided in Oregon Law (223.230), as to the final assessments for any local improvement, the City shall by ordinance or resolution authorize the issue of its bonds pursuant to the applicable provisions of Oregon Law (ORS 288).

11.6 The bond authorized to be issued under this section shall 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 cost associated with the bonds.

11.7 **Bonds.** If the question of the issuance of the specific bonds has been approved by the electors of the City and the bonds are issued as general obligation bonds, the City shall each year assess, levy and collect a tax on all taxable property within its boundaries. The amount of the tax shall be sufficient to pay all principle of and interest on the bonds that are due and payable in that year and to replenish any debt service reserves required for the bonds. In computing the amount of taxes to impose, the City shall deduct from the total amount otherwise required the amount of final installment payments which are pledged to the payment of the bonds and which are due and payable in that year, and shall add to this net amount the amount of reasonably anticipated delinquencies in the payments of the installments or the taxes.

11.7.1 The taxes shall be levied in each year and returned to the county officer whose duty it is to

emend the tax role within the time and manner provided in Oregon Law (ORS 310.060).

- 11.7.2 The taxes shall become payable at the same time and be collected by the officer who collects county taxes and shall be turned over to the City according to law.
- 11.7.3 The County officer whose duty it is to extend the county levy shall extend the levy of the City in the same manner as City taxes are extended. Property shall be subject to sale for nonpayment of the taxes levied by the City in like manner and with like effect as in the case of county and state taxes.

11.8 If the question of the issuance of the specific bonds has not been approved by the electors of the City and the bonds are issued as limited tax obligation bonds, the City may, subject only to the limitations of Section 11 b (1), Article XI of the Oregon Constitution, calculate, assess, levy and collect tax on all taxable property within its boundaries in the manner provided in this ordinance. The amount of the tax shall be sufficient to pay all principle of and interest on such bonds which is due and payable in that year and to replenish any debt service reserves required for such bonds, provided that if such bonds are issued as limited tax obligation bonds the amount of such tax shall not exceed the amount permitted under section 11 b (1), Article XI of the Oregon Constitution.

11.9 **Security Bonds.** All bond 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.

11.9.1 In the ordinance or resolution authorizing the issuance of bonds, the City may: (1) provide that all installments of final assessments be levied with respect to two or more local improvements shall secure a single issue bonds, and (2) 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.

11.9.2 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 the 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 governmental unit or the property assessed whether in tort, contract or otherwise, and irrespective of whether such persons have notice of lien.

11.10 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.

11.11 **Authority to Borrow.** 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 cost of the improvement.

- 11.11.1 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.
 - 11.11.2 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.
 - 11.11.3 Any notes authorized under this section 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 from any other sources from which bonds are payable.
 - 11.11.4 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.
- 11.12 The City may create, within the Bancroft Bond Redemption Fund maintained by the City as required by Oregon Law (ORS 223.285), separate accounts for separate issues of bonds or notes issued as provided in Oregon Law (ORS 223.235), 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.
- 11.13 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 years. Each installment is due and payable with interest as described under subsection 11.15 of this section.
- 11.14 The installments and interest are payable to the City by the property owner whose application to pay the cost of the local improvement by installments has been provided in Oregon Law (ORS 223.210).
- 11.15 The amount of each installment (percentage of the total final assessment) shall be determined by the City and shall be as appears by bond lien docket described in Oregon Law (223.230). 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 (ORS 223.215).
- 11.16 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.
- 11.17 If the owner neglects or refuses to pay installments under Oregon Law (ORS 223.265) 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 in default in the payment sum due; (2) stating the sum due either in principal or interest, or both, and any unpaid late payment penalties or charges; (3) Containing a description of the property upon the sums are owing; (4) Declaring the whole sum, both principle and interest, due and payable at once.
- 11.18 The City may then proceed at once to collect all unpaid installments and to enforce collection thereof, with all unpaid late payment penalties, attorney fees and administrative charges added thereto, in the same manner as street and sewer assessments are collected in a manner provided in ORS 223.

SECTION 12. ERRORS IN ASSESSMENT CALCULATIONS: Claimed errors in the calculation of the final assessment shall be called to the attention of the City recorder or the City manager prior to any payment on account. The City Recorder shall check the calculation. 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.

SECTION 13. AUTHORITY TO MAKE REASSESSMENT: Whenever all or part of any assessment for improvements is declared void or set aside for any reason, or its enforcement refused, by any court for 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 assessments or reassessments 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.

SECTION 14. BASIS FOR, AMOUNT AND METHOD OF REASSESSMENT: The reassessment shall be based upon the special and specific 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 original property included in the district shall remain the same except 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 property was included in the original assessment, but such interest shall not apply to any portion of the reassessment that exceed 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 assessment.

SECTION 15. EFFECT OF REASSESSMENT; EXCEPTIONS: The reassessment 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. 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.

SECTION 16. COUNCIL RESOLUTION TO REASSESS: The process required by this ordinance, or other law for making the original assessment, is 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.

SECTION 17. PUBLICATION OF NOTICE OF REASSESSMENT; CONTENTS: After the proposed reassessment is filed in the office of Recorder, 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 the place where the Council will hear and consider objections to the proposed reassessment by any parties aggrieved thereby.

SECTION 18. PERSONAL NOTICE TO EACH OWNER; RIGHT TO FILE OBJECTIONS: The Recorder shall, within five days after the first date of 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 owners agent is unknown to the Recorder, the Recorder shall mail the notice addressed to the owner or the owners agent at the city where the property is located. Any mistake, error, omission of 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 days from the day of last insertion of the printed notice, file in writing with the Recorder objections against the proposed reassessment.

SECTION 19. HEARING ON OBJECTIONS; REVISION OF REASSESSMENT: At all time and place appointed in the notice the Council shall hear and determine all objections filed under Section 18 of this Ordinance. 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 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 proposed amount to be charged against any property such reassessment shall not be made until after a new notice has been given as stated in Section 18 of this Ordinance to the owners of the property against which the amount of the assessment is proposed to be thus increased.

19.1 The publication of the notice may be for not less than two successive inserts in a newspaper as provided in Section 17 of this Ordinance, and the time when actions may be taken thereon may be not less than five days after the date of the 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 section 17 and 18 of this Ordinance and action taken thereon as provided in section 18 and this section.

SECTION 20. REASSESSMENT ORDINANCE: When the council has determined what is in its judgment is a fair, just and reasonable reassessment, it shall pass as 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 22 and 23 of this Ordinance.

SECTION 21. 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.

SECTION 22. RIGHT OF PURCHASER AT SALE UNDER PRIOR ASSESSMENT: In cases where the 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 in the reassessment, and delivers up for cancellation

any certificate or other evidence of sale. If a deed was issued at the sale, the grantee therein, his heirs, executors, administrators, successors or assigns, shall execute a deed of resale and quitclaim of all right, title and interest in the property under such sale to owner of the property and deliver the deed to the Recorder, so that the owners title may be cleared of the sale. The Recorder shall now act as escrow holder of such certificate or other evidence of sale and of such deed pending completion of the reassessment. If the reassessment is not completed, the evidence of sale and the deed shall be returned to the person delivering it. If the reassessment is completed, the certificate or other evidence of sale shall be canceled and placed on file in the office of City Recorder and the deed shall be delivered to the owner of the property specified therein. In any such purchaser, their heirs, executors, administrators, successors or assigns fails to comply with this section, they are not entitled to subrogation. In any event, the amount of the subrogation shall not exceed the amount which as been paid to the City on such sale, together with interest at the rate established under this ordinance from the date of sale until the date of payment. This amount is to be paid by the City to the purchaser, their heirs, executors, administrators, successors or assigns if and when the City collects the amount of the reassessment against the property.

SECTION 23. REVIEW OF REASSESSMENT: Notwithstanding any of the provisions of Sections 15 through 25 of this Ordinance, 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.

SECTION 24. ADDITIONAL REASSESSMENT PROCEDURE; TIME LIMITATION: No proceedings for making a reassessment shall be instituted after twenty years from the date when the first assessment was entered in to the lien docket.

SECTION 25. MUNICIPAL BONDS ACCEPTED AS PAYMENT FOR ASSESSMENT LIENS: General obligation bonds or interest coupons attached, or both, of the City are authorized for payments of all or any part of local improvement district liens, interest or penalties of or payable to the City.

SECTION 26. ASSESSMENT OF PUBLIC PROPERTY BENEFITED BY IMPROVEMENTS: Whenever all or any part of the cost of public improvements is to be assessed as 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 cost of the improvements are, in any given case of the type that may be bonded under this Ordinance.

26.1 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 otherwise been provided by law.

SECTION 27. PUBLIC ROADS INCLUDED IN SIDEWALK IMPROVEMENT DISTRICT;
ASSESSMENT ON BENEFITED PROPERTY: The City, in addition to powers granted by law or charter, may include sidewalk improvement district within the City all county roads or state highways or portions thereof within the improvement district. It may cause to be build 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 this Ordinance.

SECTION 28. PARKING AND CITY IMPROVEMENTS: The City may finance parking facilities by any one or any combination of the following methods:

- 28.1 General obligation bonds within the legal debt limitations, or revenue bonds payable primarily or solely out of revenue from parking facilities in such amounts, at such rate of interest, and upon such conditions as may be prescribed by the legal authority of the City.
- 28.2 Special or benefited assessments equal to the actual cost of the parking facilities, or a portion thereof, such assessment to be levied against property benefited in proportion to the benefited derived, the amount of such assessment to be determined in accordance with special assessment practices for local improvements as now or hereafter prescribed by this Ordinance or charter provisions of the City.
- 28.3 Parking fees, special charges or other revenue derived from the use of off-street parking facilities by motorist, lessees, concessionaires, commercial enterprises and others.
- 28.4 General fund appropriations.
- 28.5 Parking meter revenue
- 28.6 General property taxes, or gift, bequest, devise, grant or otherwise.
- 28.7 A reasonable annual fee on the privilege of occupying real property within the City or a district of the City to carry on a business, occupation, professional trade. In levying the fee, the City shall take into consideration the unmet off street parking requirements of such business. The proceeds of the fee, less refunds and cost of collection, shall be used solely for the purposes of ORS 223.805 to 223.845. The fee is in addition to, and not in lieu of, any other tax, assessment or fee required by state or local law or ordinance.

SECTION 29. 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 prior to the abandonment, any amount of the lien in excess of the benefit conferred on the property shall be canceled, and any excess payments made thereon shall be refunded to the payor, their assign, or legal representative.

SECTION 30. CURATIVE PROVISION: No improvement assessment shall be invalid by reason if it appears that the assessment as made, insofar as it affects the person complaining, is unfair, unjust, and contrary to law, and the City Council shall have the power and authority to remedy and correct all such matters by suitable actions and proceedings.

SECTION 31. SPECIAL PROVISIONS FOR SANITARY AND STORM SEWERS: When the Council finds it necessary for the public health, welfare and safety to construct sanitary sewer or storm sewer, or both, the City may, 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 Ordinance. Property owners shall have no right of remonstrance when a sewer system is constructed under this section. Those parts of this Ordinance which are in conflict with this section shall not apply.

SECTION 32. APPORTIONMENT OF LOCAL IMPROVEMENT DISTRICT ASSESSMENTS: 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:

32.1 That the subsequent partition or division is in accordance with ORS 92.101 to ORS 92.160 and is consistent with all applicable comprehensive plans as acknowledged by the Oregon Land Conservation and Development Commission.

32.2 That the proportionate distribution of the Local Improvement District assessment authorizes may be made whenever the Local Improvement District assessment remains wholly or partially unpaid, and full payment or installment payment is not due.

32.3 That the City has been requested to make such Local Improvement District assessment by an owner, mortgage, or lien holder of a parcel or real property that was formed from the partition or other division of the larger tract of real property against which the Local Improvement District was originally levied.

32.3.1 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 applicants ownership or other interest in the parcel, or, 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 Douglas County Deed Records.

32.3.2 Any and all Local Improvement District assessments made by the City pursuant to this Ordinance shall be in the form of an ordinance of the City of Drain and shall contain the following information at a minimum:

32.3.2.1 The description of each parcel of real property affected by the apportionment.

32.3.2.2 The amount of the assessment to be levied against each parcel.

32.3.2.3 The owner of the parcel.

32.4 A copy of the ordinance apportioning a Local Improvement District assessment shall be filed with the City Recorder who shall make the necessary changes or entries in the City's lien docket.

32.5 Each applicant for apportionment of an LID assessment shall pay a fee as established by the City before the City will begin the Local Improvement District assessment apportionment process.

SECTION 33. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the

validity of the remaining portions thereof. This Ordinance is intended to be as broad as allowed under Oregon Law and construction of the Ordinance or any portion should be made in favor of the policy of upholding local improvement districts.

SECTION 34. EMERGENCY CLAUSE: Insomuch as it is necessary for the health, safety, comfort and convenience of the people of the City of Drain that this Ordinance have immediate effect, an emergency is hereby declared to exist, and this Ordinance shall be in full effect from and after its passage and approval.

PASSED AND ADOPTED THIS 14th DAY OF April, 1997.

Brad Borigo

4-17-97

Brad Borigo, Mayor, City of Drain

Date:

ATTEST:

Carl A. Patenode

4-17-97

Carl Patenode, City Administrator

DATE: