



AGENDA & Notice of Planning Commission Work Session Meeting

The Planning Commission of the City of Newport will hold a work session meeting at **6:00 p.m., Monday, November 9, 2015**, at the Newport City Hall, Conference Room "A", 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission and the City Council reserve the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session.

NEWPORT PLANNING COMMISSION Monday, November 9, 2015, 6:00 p.m.

AGENDA

A. Unfinished Business.

1. Draft changes to the Local Improvement District (LID) code.

B. Adjournment.

Memorandum

To: Newport Planning Commission/Citizen Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: November 5, 2015
Re: Newport Local Improvement District Implementation Strategies

Enclosed are a couple of memos from FCS Group outlining Local Improvement District (LID) implementation strategies and changes they recommend the City make to its LID regulations. This is a timely opportunity to update the Commission on the status of the project. I would appreciate it if you could review the materials and come prepared to discuss the recommendations and share your observations on how this is coming together.

The consultant is working on draft Comprehensive Plan policies to provide decision makers and staff with guidance related to:

1. Where LIDs fit within the bundle of infrastructure funding strategies available to the city; and
2. How projects should be prioritized; and
3. Factors decision makers should consider when deciding whether or not an LID should be formed.

I expect to have a copy of the draft policies prior to the work session and will distribute them via email or will bring hardcopies with me to the meeting on Monday. A date has not been set for the next meeting of the Technical Advisory Committee that is assisting staff on this project. I anticipate that such a meeting will be held later this month or in early December. A hearings process to adopt the Comprehensive Plan policies and code changes is likely to occur shortly after the first of the year.

To: Derrick Tokos, AICP, City of Newport

Date: October 16, 2015

From: Todd Chase and Tim Wood, FCS GROUP

CC: David Helton, Oregon Department of Transportation and Carl Springer, DKS Associates

RE: LID Implementation Strategies (Task 3.3, D-7)

1. INTRODUCTION

This Memorandum describes LID Implementation Strategies of recommended techniques and strategies for implementation of LIDs in Newport. This paper focuses on policy issues identified previously (Task 2) including:

- A. Methods used to evaluate the benefits and costs of LIDs
- B. Items to be included with the Engineers Report on LID formation
- C. Transportation Project evaluation and selection criteria to be considered when forming a new LID
- D. Criteria to determine eligibility of transportation projects for other types of funding sources
- E. Strategies to leverage existing non-remonstrance agreements
- F. Guidance on the use of future non-remonstrance agreements in lieu of requiring transportation improvements at the time of construction
- G. A draft prototypical non-remonstrance agreement
- H. Guidance on how to effectively administer LIDs given modest City staffing and resources
- I. Guidance on how to mitigate risk to local jurisdictions when financing LIDs
- J. Effective property owner and stakeholder outreach techniques

2. ISSUES

A. MEASURING LID BENEFITS

When considering a project for LID funding, the local government must first look at the basic requirements for an LID. If the project provides specific value enhancement for the surrounding properties then it can be considered for an LID. While there may be additional benefits from a given transportation project (i.e., a paving project may mitigate dust), the level of benefit received by each property may vary significantly depending upon the property location and owner's perspective. Hence, the type of benefits to be quantified should be as clear, consistent and objective as possible.

The benefits of the LID must always exceed the costs of the LID, and can be measured in a variety of ways, including the following:

Transportation Projects

Benefits should include: the expected increase in property (land) value after the improvement is made for each affected tax lot; and/or the expected increase in vehicle or person trip generation for each tax lot after development occurs. Analysis of benefits should also take into account developable land area and expected trip generation by land use zone designation. Benefits can be measured for each tax lot in terms of net increase in land value, net increase in trips (after development by applying trip generation assumptions by land use classification using the Institute of Traffic Engineers (ITE) Manual or locally adopted system development charge methodology), or a combination of these factors (e.g., 50% weighting assigned to each factor).

Sewer and Water Projects

Benefits should take into account the expected increase in number of buildable lots after the improvement is made for each tax lot in the LID. Analysis should take into account developable lots by land use designation, or number of hookups provided for each tax lot. Benefits can take into account proximity to the improvement. Zones of benefit inside the LID may be established that take into account the development readiness of the new lots, with more weight given to areas that are in close proximity to the project (e.g., lots that front the new sewer/water line vs. other lots within the local improvement district).

Stormwater Projects

Benefits should take into account the expected net increase in impervious area that is allowed construction of new stormwater facilities after development occurs for each tax lot. Analysis of benefits should take into account developable land area by land use zone designation, and expected level of impervious area added on each tax lot based on analogous developments. Benefits can be measured in terms of net increase in impervious area per tax lot with the local improvement district.

B. ENGINEER'S REPORT CONTENTS

The engineer's report shall contain:

1. A full description of the project and its boundaries.
2. A description of each parcel of land specially benefited, including the name of the record owner of the parcel.
3. An estimate of the probable cost of the project (or a statement of the actual cost if the project has been completed), including property acquisition, design, construction, engineering, legal, administrative, interest or other costs.
4. A recommendation as to what portion of the total costs of the project should be paid by specifically benefited property in addition to the assessed valuation and any unpaid assessments against each lot.

5. A recommendation of a method of assessment, together with an estimate of the cost per unit to specially benefited property.

In most instances, a preliminary engineer's report will also contain multiple scenarios for methods of assessments with an evaluation of each scenario, along with a record of public input received during the LID formation process. A revised engineer's report may be required if project costs are substantially higher than preliminary cost estimates. Please refer to Section J. for public outreach strategies that are recommended in concert with the engineer's report.

C. TRANSPORTATION PROJECT EVALUATION AND SELECTION CRITERIA TO BE USED WHEN CONSIDERING NEW LIDS.

The local government must have tools to evaluate the costs and benefits of LIDs, especially when cities opt to initiate an LID without petition by a majority of the affected property owners. Considering the project, alternative funding sources, and then evaluating the LID project are important for a LID formation. When initiating an LID by the city council without petition by property owners, the city should consider the following factors:

- ◆ The percentage of the proposed district subject to pre-existing non-remonstrance covenants.
- ◆ Health and safety benefits to the city
- ◆ Ability to leverage alternative methods of funding from existing sources.
- ◆ Potential for non-local grant funding.
- ◆ Overall city-wide benefits (e.g. economic, travel time, fiscal).
- ◆ Consistency with stated goals in city comprehensive plan.
- ◆ The priority of the project per adopted public facility plans or capital improvement programs.
- ◆ Potential return on investment and risk. The ability of the district to self-finance the project and to maintain adequate reserves to ensure that payments are made on bonds/loans, regardless of the property owners' repayment.

Additionally, the local government must examine its available funds or bonding capacity. If a property owner wants to finance the improvements, the local government may need to issue Bancroft bonds or back initial construction with other funds.

D. CRITERIA TO DETERMINE THE ELIGIBILITY OF TRANSPORTATION PROJECTS FOR OTHER TYPES OF FUNDING SOURCES

When transportation improvements are made on collector or arterial roadways, it is likely that the benefit will extend beyond the LID area, since those facilities will be enjoyed to some extent by citywide residents, visitors and employees. In such cases, LIDs could be views as an ancillary

funding source that is relied upon to match other local and non-local funding sources (e.g., street funds, local gas tax, street utility fees, system development charge revenues, urban renewal district revenues, etc.).

The city's Transportation System Plan (TSP) should include trip generation modeling data that determine the share of trips on collectors and arterials that are attributed to citywide vs. regional (outside city) travel demand. The TSP or the local Transportation System Development Charge (SDC) Methodology Report should include a list of qualified public improvements that are eligible for SDC funding. The share of project costs that are funded as part of an SDC cost basis, may not also be funded using LIDs.

A city (or region) may also have other adopted planning documents, such as: urban renewal plans, concept plans for annexation areas, and capital improvement plans that include transportation projects with specified local and non-local funding sources. Such plans can provide guidance regarding the use of other identified funding sources for specific transportation facility improvements.

Hence, the eligibility of transportation projects for LIDs and other types of funding should take into account:

- ◆ Transportation facility street classification
- ◆ Local, citywide and non-local (regional) trip generation along the facility
- ◆ Pre-existing SDC methodologies
- ◆ Establishment of other adopted plans and policies

E. STRATEGIES TO LEVERAGE EXISTING NON-REMONSTRANCE AGREEMENTS.

When projects are deemed to be a high priority by the city engineer (based on adopted public facility plans and/or capital improvement programs), the city may initiate an LID formation process with or without petition from affected property owners. In these instances, the presence of pre-existing non-remonstrance agreements should be ascertained. If more than one-third of the benefit area properties (based on land area) have executed such agreements, the formation of a new LID should have a reasonable chance of being implemented, if the factors listed above under item C are adequately considered.

F. GUIDANCE ON THE USE OF FUTURE NON-REMONSTRANCE AGREEMENTS IN LIEU OF REQUIRING TRANSPORTATION IMPROVEMENTS AT THE TIME OF CONSTRUCTION.

The use of future non-remonstrance agreements are most important when the following conditions apply:

- ◆ The tax lot is contained in an area subject to future annexation by the city and within an urban growth management area per agreement between the city/county.

- ◆ The tax lot is contained inside an area designed for strategic investment by the city, such as an urban renewal area.
- ◆ Development of the tax lot is expected to utilize at least 10% of the remaining capacity of an existing transportation facility on a collector or arterial road or intersection identified in a TSP.
- ◆ Development of the tax lot is dependent upon access or connection to a future collector/arterial roadway improvement or sewer/water trunk line system improvement identified in a locally adopted public facility plan.
- ◆ Per the direction of the city engineer, city manager, community development director or city council.

G. DRAFT PROTOTYPICAL NON-REMONSTRANCE AGREEMENT

A draft non-remonstrance agreement template is included as **Attachment A**.

H. ADMINISTERING LIDS

A city will incur additional costs when administering LIDs. Costs associated with the LID formation and financing should be identified as part of the engineer's report and included as part of the LID assessment. Other costs, associated with LID book keeping, collections and administration should be included as part of LID assessments to property owners that elect for installment payment options. In most cases, an administration charge of 4-5% is added to the original LID assessment to account for billing/collection costs, and an additional finance charge is added for late payments payment plans.

The actual cost of LID administration and collections will vary depending upon the city's established customer billing practices and resources. City's often face the following decisions when determining the level of staff time and resources required for administering an LID:

- Internal account billing software capabilities
- Staff availability for billing, customer service, collections, and bookkeeping

If adequate staff or resources are not available, there are several "third party" organizations that the city may contract with to perform such duties. The additional expense of "third party" contractors may be added into the LID assessments. A list of potential contractors is provided below.

Bill Printing and Mailing

Advanced Direct Marketing (Portland, OR)

Advantage Business and Court Forms (Yakima, WA)

CDCD/Sourceline (Miamisburg, OH)

Data Bar (Spokane, WA)

DATAMAX (Ashland, VA)

Data Prose (Oxnard, CA)

The Master’s Touch (Spokane, WA)
Mobes Business Forms (Durham, OR)
Moonlight Business Process Outsourcing (Bend, OR)
Oregon Envelope (Portland, OR)
Poorman-Douglas Corporation (Beaverton, OR)
Standard Register (Battle Ground, WA)

Remittance Processing

Current banking partner(s)

Joint Remittance Processing Center (a joint venture of Clark County and Clark Public Utilities in Vancouver, WA)

Collections

AllianceOne (Feasterville-Trevoze, PA)
A.R.M. Solutions (Camarillo, CA)
Professional Credit Service (Springfield, OR)

I. GUIDANCE ON HOW TO MITIGATE RISK TO LOCAL JURISDICTIONS WHEN FINANCING LIDS.

When financing LIDs, local jurisdictions must carefully consider the risks that can jeopardize the city’s fiscal status in the event of an economic downturn or late payments by affected property owners. Through the LID process, cities allow property owners to either repay the entire assessment at once or to make installment payments tied to bonds that the municipal government obtains – often called LID bonds or Bancroft bonds. The city will set the period of time over which the payments will be made if a property owner opts for installments. Generally, bonded payments are made every six months over ten years. However, the repayment can be structured for the appropriate time as the bonding authority may allow but no more than 20 years. Cities cannot profit from this arrangement, and it is often a cost savings to the property owner compared to private financing options.

Failure of the property owner to make installment payments, therefore, affects the city’s bond rating. Moreover, this arrangement requires approval by a bonding authority, therefore the project and the possibility of repayment need to be well supported in order to receive the necessary bonding. Often the bonding authority requires the city to maintain a reserve to insure that payments are made on the bond, regardless of the property owner’s repayment. Therefore, formation of the LID should require the city to only pursue reasonable projects with good return on investment for the bonding authority. Otherwise, no bonding authority will provide bonds and the city will have to self-finance the project. General funds are normally insufficient to carry these debts for the long term.

The following practices help mitigate risk to local jurisdictions when financing LIDs:

- ◆ Use LIDs as a last dollar for project completion or for “small projects” less than \$100,000 in cost

- ◆ For single-developer LIDs, require owners to maintain performance bonds in escrow that are equal to 1-2 years of LID payments.
- ◆ Ensure that the LID cost is no more than 1/3 the land value after improvements to avoid defaults or presumptuous estimates of private improvement valuations that may or may occur.
- ◆ Ensure that there are no pre-existing property liens on tax lots included within the LID.
- ◆ Ensure that adequate debt coverage levels are built into the LID assessments.

J. STAKEHOLDER OUTREACH TECHNIQUES

LIDs are politically sensitive endeavors for staff and elected officials alike. The cost to property owners can be significant which can lead to backlash against the elected officials who voted to approve a new LID. Staff can work with stakeholders to obviate negative reactions to an LID by conducting effective and inclusive outreach to generate requisite buy-in.

While Oregon statutes on LIDs provide minimum requirements for community outreach when forming a new LID, it is recommended that staff exceed state requirements by performing the following actions.

- ◆ **Clear and Objective LID Ordinance:** It is important that the ordinance which dictates a city's LID process be easily understood. Language should be clear, objective, and definitive to provide a consistent and predicable process for forming LIDs.
- ◆ **Early Input:** Staff should provide property owners within a potential LID the opportunity to provide input and express concerns. Community open houses and informational flyers placed on doors, along with direct mailings provide early "touch points" that provide opportunities for affected property owners to contact staff with issues and concerns. This approach can help staff anticipate and perhaps eliminate issues of concern prior to establishing a preferred LID benefit allocation framework. Additionally, early outreach allows staff to inform and discuss the anticipated benefits of the LID.
- ◆ **Interim Input:** Once the estimates of LID costs, benefits and assessment approaches are documented in a draft engineer's report, affected property owners should have an opportunity to comment. It is recommended that this input period range from 60-90 days, with a public informational meeting held by city staff during the last 30 days of this process. All public comments should be recorded and made part of the record for consideration by city council when the LID is advanced for adoption.
- ◆ **Discussion in the instance that assessment is higher than anticipated:** If the final assessment is higher than the initial assessment by a significant amount (e.g., 10 to 15%), staff should schedule an additional public meeting and/or offer to schedule individual meetings with affected property owners to explain why the costs have changed. It is important that the local jurisdiction provide a transparent and consistent process when finalizing LID assessments, and consider alternative funding resources, when appropriate to ensure that LID assessments do not exceed LID benefits.

Attachment A

After recording, please return form to:
City of Newport, Community Development Dept. (copy)
169 SW Coast Hwy., Newport, OR 97365
And
Lincoln County Assessor's Office (original)
225 W Olive St # 207, Newport, OR 97365

RESTRICTIVE COVENANT WAIVING RIGHT OF REMONSTRANCE FOR PUBLIC FACILITY IMPROVEMENTS

We the undersigned, being the legal owners of real property hereinafter described, do hereby consent to the construction of public facility improvements: _____

_____ ; pursuant to the City of Newport Ordinances regarding local improvement districts or other similar provisions in effect at the time of subsequent improvement. In consideration of approval of land use actions, and of not being required to improve said public facilities at this time, we hereby expressly waive any and all right to remonstrance against the formation of such local improvement district, by the City of Newport and the said assessment of such costs thereof against said property.

This consent and waiver to remonstrate, shall expire twenty years from the date hereof but the undersigned owners or their heirs, successors or assigns shall renew this covenant and extend same for an additional 20 years upon request of the City of Newport.

The property subject to this consent and waiver of remonstrance is described as:

Map# _____

TaxLot# _____

_____, and is more particularly described as follows, to-wit:

That tract of land situated in (Section, Township, Range, Lincoln County, Oregon)

Property Owners:

It is hereby intended that this consent to, and waiver of right of remonstrance against, the said public improvements pursuant to City of Newport Ordinances regarding local improvement districts or other similar provisions in effect at the time of subsequent improvement shall be binding on ourselves and all subsequent owners of the hereinabove described property, and may be removed only with the consent of the City of Newport. If said local improvement district includes portions of said property in unincorporated portions of Lincoln County, then upon annexation of any part of the above described property to a city, this waiver shall automatically be assigned to the city with full rights to enforce its terms.

The covenants herein contained are to and with the City of Newport , a municipal corporation under the laws of Oregon, and said covenants shall be taken and construed as running with the property described above.

IN WITNESS WHEREOF, the Grantor above named, by and through these parties:

Have caused this instrument to be duly signed this ____ day of _____, 20_____.

Title Holder Names:

Attested By (signatures)

STATE OF OREGON
COUNTY OF LINCOLN

BE IT REMEMBERED, That on this ____ day of _____ A.D. 20____, personally appeared _____, who

being duly sworn, did say that he/she is said property owner, and that the foregoing instrument was signed on behalf of said property owner(s) by their authority, and they acknowledged said instrument to be their voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.

Notary Public for Oregon

My commission expires: _____

To: Derrick Tokos, AICP, City of Newport

Date: October 21, 2015

From: Todd Chase and Timothy Wood, FCS GROUP

CC: David Helton, ODOT/TGM; and Carl Springer, DKS Associates

RE: Newport LID TGM Project, Task 4.1 Draft LID Plan/Code Amendments (D-4A)

1. PURPOSE

This memorandum provides recommended draft comprehensive plan and Newport Municipal Code amendments that are intended to address the issues and best practices identified in the previous work tasks and deliverable work products. This work effort included a review of the City's existing plan and code documents along with a legal review of the City's existing LID ordinance.

2. RECOMMENDATIONS

At this time, no specific comprehensive plan amendments have been identified as requirements for implementing a new LID ordinance. Our recommendations include: repealing the existing Newport LID ordinance in its entirety; and replacing it with a new ordinance citing Chapter 12.05 Local Improvement Districts of the municipal code. Our specific recommendations are intended to provide more transparency, objective clarity and direction for the public, city staff, and City Council when initiating, forming and administering LIDs in the future.

The attached draft recommended code amendments include the following enhancements:

- ◆ Clarity with regard to terms and definitions used;
- ◆ Transparency in the LID formation procedures used by the city staff and council;
- ◆ User-friendly code, with clear and concise sections that describe the various steps and processes required to form an LID;
- ◆ More detail in what is to be included in the engineer's report
- ◆ Recommendations regarding factors the council may consider when initiating an LID;
- ◆ Recommendations regarding methods to be considered with apportioning the costs of an LID;
- ◆ Code provisions aimed at enhancing public and stakeholder outreach;
- ◆ Code provisions aimed at reducing administrative costs when forming LIDs;
- ◆ Code provisions aimed at leveraging alternative sources of funding for LIDs that meet certain requirements
- ◆ Miscellaneous housekeeping items, such as processes for appeals and the recording of liens.

ATTACHMENT A DRAFT CODE AMENDMENTS

(separate document)

**CHAPTER 12.05 LOCAL IMPROVEMENT DISTRICTS
(10/21/15 draft)**

<u>12.05.005</u>	<u>Definitions</u>
<u>12.05.010</u>	<u>Initiations of Local Improvement Districts</u>
<u>12.05.015</u>	<u>Preliminary Engineer's Report</u>
<u>12.05.020</u>	<u>Council's Action on Engineer's Report</u>
<u>12.05.025</u>	<u>Notice of Hearing on District Formation</u>
<u>12.05.030</u>	<u>Hearing on District Formation</u>
<u>12.05.035</u>	<u>Final Plan and Specifications</u>
<u>12.05.040</u>	<u>Construction</u>
<u>12.05.045</u>	<u>Costs Included in Assessment</u>
<u>12.05.050</u>	<u>Method of Assessment</u>
<u>12.05.055</u>	<u>Alternative Methods of Financing</u>
<u>12.05.060</u>	<u>Final Assessment</u>
<u>12.05.065</u>	<u>Notice of Assessment</u>
<u>12.05.070</u>	<u>Payment</u>
<u>12.05.075</u>	<u>Apportionment of Liens upon Partition</u>
<u>12.05.080</u>	<u>Lien and Foreclosure</u>
<u>12.05.085</u>	<u>Errors in Assessment and Calculations</u>
<u>12.05.090</u>	<u>Abandonment of Proceedings</u>
<u>12.05.095</u>	<u>Curative Provisions</u>
<u>12.05.100</u>	<u>Reassessment</u>
<u>12.05.105</u>	<u>Remedies</u>
<u>12.05.110</u>	<u>Interpretation and Coordination with State Law</u>
<u>12.05.115</u>	<u>Confidentiality</u>
<u>12.05.120</u>	<u>Appeals</u>

12.05.005 Definitions:

The following definitions apply unless inconsistent with the context:

"Local Improvement" has the meaning given under ORS 310.140 (9) (a) means a capital construction project or part thereof, undertaken by a local government, pursuant to ORS 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or part of the improvement:

- 1) That 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 the completion of the project; and
- 3) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

“Local Improvement District (LID)” means the area determined by the council to be specially benefited by a local improvement, within which properties are assessed to pay for the cost of the local improvement.

“Lot” means a lot, block or parcel of land.

“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 role in the office of the County Assessor.

“Remonstrance” means a written objection to the formation of an LID filed by an owner of property within a proposed LID.

“Non-Remonstrance Agreement” means a written agreement with the city, executed by an owner or the owner’s predecessor in title, waiving the right of an owner to file a remonstrance.

12.05.010 Initiation of Local Improvement Districts

A. The council by motion or on petition of the owners of half the property benefited by the proposed public improvement may direct that a preliminary engineering report be prepared to assist the council in determining whether a local improvement district should be formed to pay all or part of proposed street, sewer, sidewalk, drain and/or other public improvements.

B. When initiating an LID without petition by property owners, the city council may consider one or more of the following preliminary evaluation factors:

1. The percentage of the proposed district subject to pre-existing non-remonstrance agreements. If over 25% of the property within a potential local improvement district (as measured by area or street frontage) has recorded non-remonstrance agreements on file with the city, a new district may be considered.

2. Health and safety benefits to the city. A new district may be considered if public improvements are necessary to address existing or potential health and safety benefits to city residents, businesses, employees or visitors; and such improvements enhance the value of properties within the district.

3. Ability to leverage alternative methods of funding from existing sources. A new district may be considered if

public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total estimated capital improvement cost to be derived from existing alternative local funding sources; and such improvements enhance the value of properties within the district.

4. Potential for non-local grant funding. A new LID may be considered if public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total estimated capital improvement cost to be derived from potential non-local state or federal funding sources; and such improvements enhance the value of properties within the district.

5. Overall city-wide benefits (e.g. economic, travel time, fiscal). A new LID may be considered if public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total benefit accruing to city residents, businesses, employees or visitors outside the potential LID; and such improvements enhance the value of properties within the district.

6. Consistency with stated goals in city comprehensive plan. A council initiated LID should be consistent with one or more goals or objectives identified in the local jurisdiction's comprehensive plan, public facility plan or related local policies adopted by resolution or ordinance. For example, special consideration may be granted for improvements that promote safe access to schools or targeted area redevelopment plans and objectives.

7. The priority of the project per adopted public facility plans or capital improvement programs. In addition to the above factors, a council initiated LID may be considered if it can facilitate implementation of a high priority improvement that has been identified in an adopted transportation plan, public facility plan, or capital improvement program; and such improvements enhance

the value of properties within the district.

8. Potential return on investment and risk. In the consideration of any of the above mentioned factors, a council initiated LID should have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans, regardless of the property owners repayment. Risk mitigation considerations should consider the possibility of unknown cost or construction issues (e.g., need for additional right of way, construction in drainage areas or wetlands, and topographic challenges). It is recommended that the aggregate assessment within a prospective local improvement district be less than one-third the existing market value of properties within the district.

C. When a potential LID project is deemed by the city engineer or community development director to meet one or more of these factors, a council initiated district may be advanced by the council through a resolution requesting that a preliminary engineering report on LID formation be prepared.

12.05.015 Preliminary Engineer's Report

A. The preliminary engineer's report shall contain:

1. A full description of the project and its boundaries.
2. A description of each parcel of land specially benefited, including the name of the record owner of the parcel.
3. An estimate of the probable cost of the project (or a statement of the actual cost if the project has been completed), including property acquisition, design, construction, engineering, legal ~~and~~, administrative, interest or other costs.
4. A recommendation as to what portion of the total costs of the project should be paid by specifically benefited property in addition to the assessed valuation and any unpaid assessments against each lot.
5. A recommendation of a method of assessment, together with an estimate of the cost per unit to

specially benefited property.

6. A recommendation whether to proceed with formation of the local improvement district.

12.05.020 Council's Action on Engineer's Report

A. After the engineer's report has been filed with the city recorder, the council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvements, or it may abandon the improvement.

12.05.025 Notice of Hearing on District Formation

A. Unless all owners of specially benefited property have petitioned for formation of the local improvement district and waived the right of remonstrance, the city shall ~~mail~~ provide notice to property owners of a council hearing on the proposed district ~~at least ten days prior to the hearing~~ by submitting a notice in a newspaper of general circulation within the town and by mailing notice to the owner's address listed in the county tax records. The city may provide additional notice.

B. Within ten (10) business days of the filing of the report required by NMC 12.05.15 the recorder shall cause a notice to be published twice in a newspaper of general circulation within the city setting out the following:

1. That a written project report for a proposed LID is on file and is available for examination at City Hall
2. The date said report was filed
3. The estimated probable cost of the proposed local improvement or the actual cost of the improvement if it has been completed;
4. A description of the proposed improvement district and that a map of the proposed district is available for examination at City Hall;
5. The time and place of the hearing required by NMC 12.05.25
6. A statement that written and oral testimony submitted by any person will be considered at such hearing but that said testimony will not be considered as a remonstrance; and
- 1-7. That property owners wishing to remonstrate against the formation of the proposed district

should present their remonstrance in writing at the time and in the manner set forth in NMC 12.05.025 C

~~B. The notice shall contain:~~ C. Not less than ten (10) days prior to the hearing required by NMC12.05.025, mail to each property owner designated in the written engineering report a notice stating:

1. The information set forth in Subsection B of this section;

2. The proposed method of assessment;

3. The estimated amount of the assessment for each lot or portion thereof owned by the owner and whether the assessments are being levied prior to construction based upon estimates of project cost or after construction based upon known costs; and

4. The specific procedure for filing remonstrance provided by NMC12.05.025 C

D. Post a copy of the preliminary map of the proposed improvement district at City Hall.

~~1. A general description of the proposed local improvement(s) and the boundaries of the district, which shall include all specially benefited properties and no properties that are not specially benefited.~~

~~2. An estimate of the total cost of the improvement.~~

~~3. The date, time and place of the public hearing.~~

~~4. A statement of the place where the preliminary engineer's report and other information on the project may be obtained.~~

~~5. A description of the proposed method of assessment and allocation of costs.~~

~~6. A statement that the purpose of the hearing is to hear comments and remonstrances and that all comments and remonstrances must be submitted prior to the close of the hearing.~~

~~7. A statement that the council may modify the proposed improvement(s) and modify the proposed boundaries of the district.~~

~~8. A statement that the costs, proposed allocation of costs, and proposed method of assessment are estimates or proposals only and that the actual assessment will be based on actual costs and on a method of assessment to be determined only after the construction of the local improvement(s) is completed.~~

12.05.030 Hearing on District Formation

- A. After the engineer's report, as submitted or modified, has been approved or accepted by city council resolution, ~~t~~The council shall hold a public hearing on the proposed improvement and formation of the district and consider oral and written testimony, as well as remonstrances. Such hearing shall be held after the receipt of the engineering report described in NMC 12.05.015 but not less than fifteen (15) days after the date of the second publication of notice.
- B. If property owners owning two-thirds or more of the property area within the district to be specially assessed remonstrate against the improvement, the council shall suspend formation of the district for a period of not less than six (6) ~~not proceed with forming the district and financing the improvement by special assessment. This~~months. This provision shall not apply if the only improvements to be constructed are sidewalks or if the council unanimously declares the improvement to be needed because of an emergency. If a property has multiple owners, a remonstrance by an owner shall be considered a fraction of a remonstrance to the extent of the interest in the property of the person filing the remonstrance.
- C. All remonstrances must be in writing and filed with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.
- D. If insufficient remonstrances are filed to prevent the formation of the local improvement district, the council shall have discretion whether or not to form the district and proceed with the public improvement.
- E. Based on testimony at the hearing, the council may modify the scope of the improvements and/or the district boundary. The council may use any reasonable method of

determining the extent of the local improvement district based on the benefits of the proposed local improvement(s). If any modifications approved by council include additional property or result in a likely increase in assessments on any property, the city shall hold another hearing and provide notice of the additional hearing in the same manner as it provided notice of the initial hearing.

- F. A decision to accept the engineer's report, form the local improvement district and proceed with making the local improvements shall be by resolution. This resolution shall at a minimum address the following:
1. Create the local improvement district and establish its boundaries;
 2. Determine generally the time for commencing and the manner of construction;
 3. Establish an account for the receipt and disbursal of monies relating to the project; and
 4. Establish the method for allocating the costs associated with the project.

12.05.035 Final Plan and Specifications

- A. After a council decision to form the district and proceed with the local improvement(s), the city engineer shall be responsible for acquisition of necessary rights-of-way and easements and for development of a final plan and specifications prior to publishing contract solicitation documents.
- B. After developing the final plan and specifications, the city engineer shall prepare a new estimate of costs. If the new estimate ~~significantly exceeds the~~ original cost estimate by 10% or more available to the council at the time of its hearing or if the city engineer deems there to be ~~there are~~ significant changes in the project as a result of the additional unanticipated work, a supplemental engineer's report shall be prepared and submitted to the council which shall hold a hearing on the revised engineer's report. The hearing shall be noticed in the same manner as the original hearing, and property owners shall have the right to submit a remonstrance based on the revised engineer's report. The council shall follow the same procedure and standards applicable to the original hearing.

12.05.040 Construction

- A. Construction work on the local improvement(s) may be by the city, by another government agency, by contract with a private contractor, or by any combination of those entities. Any contracting shall be in accordance with the city's public contracting rules.
- B. Construction may proceed after the development of the final plan and specification if the final plan and specifications do not significantly differ from the improvements authorized by the council after the initial hearing. If an additional hearing is held, construction may proceed after a council decision accepting the revised engineer's report and directing that the local improvement(s) be constructed.

12.05.045 Costs Included in Assessment

The costs and expenses that may be assessed against specially benefited property include but are not limited to:

- A. The costs of property, right-of-way or easement acquisition, including the cost of any condemnation proceedings.
- B. Engineering and survey costs.
- C. Costs of construction and installation of improvements, including but not limited to: streets, curbs, sidewalks, gutters, catch basins, storm water improvements, driveways, accessways, lighting, traffic control devices, painting, and striping, surface water management facilities, water and sewer lines, lift stations, and fire hydrants.-
- D. Costs of preliminary studies.
- E. Advertising, legal, administrative, survey, engineering, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.
- F. Financing costs, including interest charges.
- G. Attorney fees.
- H. Any other necessary expenses.

12.05.050 Method of Assessment

A. The Council shall:

- (1) Use a fair and reasonable method for determining the extent of the improvement district boundaries that is consistent with the benefits derived.
- (2) Use a fair and reasonable method for apportioning the actual cost or estimated cost of the local improvement among the benefited properties.

B. The Council may:

- (1) Authorize payment by the City of all or any part of the cost of such improvements; provided that the method selected creates a reasonable relation between the benefits derived by the property specially benefited and the benefits derived by the City as a whole.
- (2) At any time prior to the effective date of the resolution levying the assessments for any improvement district, modify the method adopted in the resolution forming the improvement district if the Council determines that a different method is a more just and reasonable method of apportioning the cost of the project to the properties benefited.
- (3) Use any other means to finance improvements, including federal or state grants-in-aid, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance to pay either all or any part of the cost of the improvements.

C. In establishing a fair and reasonable method for apportioning the actual or estimated cost of local improvements among benefited properties, the Council shall rely upon the following guidelines:

(1) Individual property owners shall pay for public improvements specially benefiting their property. The determination of benefit shall be made irrespective of whether the property is vacant or the owner elects to connect to the local improvements. Special costs or features of the improvement that benefit a particular parcel of property in a manner peculiar to that parcel shall, together with a share of the overhead for the improvement, be assessed separately against the parcel.

(2) Costs of the improvement to be borne by the City shall be excluded from the assessment before apportionment. The City will pay the cost of:

(i) Extra capacity improvements when the size of the public improvements required exceed the minimum standards established in the Specifications and Standards for Construction of Public

Improvements adopted in accordance with local transportation plans or public facility plans, and the project has been included in the City budget document for the fiscal year during which construction of the improvement is scheduled; or

(ii) Special and unusual costs when the Council determines that circumstances exist which warrant City payment of all or a portion of the cost of the public improvements.

D. In establishing a fair and reasonable method for apportioning actual or estimated costs of local improvements among benefited properties, the Council may, but in no way is required to, rely upon the following guidelines:

(1) Improvement Costs of Streets.

(i) Street improvement costs may include all improvements required or as established by the improvement district from right of way to right of way. Such improvements shall meet the minimum standards adopted under the Newport Transportation System Plan and may include any of the elements identified in Section 12.05.045.

(ii) Costs shall be applied on a per linear foot basis, or other method identified in the engineer's report. Where a property owner requests or requires supplemental approach construction, the costs associated with that additional construction shall be assessed to the individual property owner.

(2) Improvement Costs of Sidewalks. Parcels abutting a sidewalk shall be liable for a proportionate share of the cost of the sidewalks, based on the front footage of the parcel abutting the sidewalk. Where, however, the Council finds that construction of a sidewalk on both sides of the street is unnecessary or unfeasible, the cost of the sidewalk on one side of the street may be assessed to both the parcels abutting the sidewalk and the parcels on the opposite side of the street from the sidewalk.

(3) Improvement Costs of Surface Water Management. The cost to be assessed shall be apportioned to each parcel within the improvement district on the basis of its land area that contributes to or otherwise directly benefits from the City's drainage system.

(4) Improvement Costs of Water and Sewer Lines.

(i) The properties specially benefited by a sewer main or water pipe shall bear the cost of the system up to and including eight inches of pipe diameter. These costs shall be apportioned to each parcel on the basis of a cost per square foot of service area, determined by dividing the total system cost by the total service area.

(ii) In addition to main or pipe costs, each property benefited by a sewer main or water pipe shall be considered to have at least one service line connection point. If more than one service line connection point is provided for a benefited parcel, it shall be assessed for the actual number of service line connection points. All costs related to the service lines, including overhead costs, shall be divided by the total number of service line connection points, to determine the cost per service line connection point.

(5) Corner Lots. Corner lots may be exempted from an assessment for the first 100 feet of frontage on the side abutting a local improvement, or for the full length of the side abutting the improvement, whichever is shorter, if one or more of the following conditions exist and the City Council grants an exemption:

(i) The local improvement is required to serve a new subdivision or new development, the corner lot is located outside the subdivision or development, and the corner lot will receive no benefit from the local improvement for which the assessment is levied; or

(ii) The corner lot has two sides abutting the local improvement for which the assessment is levied and is being assessed for the full frontage of one side abutting the improvement; or

(iii) The Council determines the Corner Lot receives no benefit from the local improvement for which the assessment is levied and the property has been previously assessed for the same type of local improvement on the side not abutting the local improvement for which the assessment is levied.

The City Council need not grant a Corner Lot exemption if the Council determines the property will receive a benefit from the local improvement for which the assessment is being levied.

(6) Minimum Frontage. All lots may be assessed for an equivalent front footage of no less than 60 feet.

(7) Benefited Property. A benefited property may be defined as one which is adjacent to any street, easement or right of way on which a local improvement is installed or which reasonably is capable of connecting to, or directly benefiting from, the improvement.

(8) Assessment Alternative. Assessment alternatives that vary from those listed in this section may be identified within the engineer's report. A weighting method may be considered among multiple alternatives to determine a hybrid alternative assessment.

(9) Equal Assessments. If property owners of all or part of the benefited properties within the improvement district are in unanimous agreement, and so request, then their share of the improvement costs may be apportioned in equal amounts.

12.05.055 Alternative Methods of Financing

A. The Council may allocate a portion of the cost of such improvement from the funds of the city. The council may base this on topographic concerns, the physical layout of the improvement, unusual or excessive public use of the improvement, or other characteristics. The amount assessed against all property specially benefited will be proportionately reduced.

B. The council may use other means to finance, in whole or in part, the improvements, including federal or state grants-in-aid, sewer or other types of service charges, revenue or general obligation bonds.

12.05.060 Method of Final Assessment

A. After final acceptance of the public improvements by the city, the city engineer shall prepare a final report that describes the completed improvement, lists the total costs with a breakdown of the components of the total cost, and proposes a method of assessment. The city engineer shall prepare the proposed assessments for each lot within the improvement district, file the assessments with the finance director, and submit a proposed assessment resolution to the city council. The city engineer shall provide an explanation of any difference in the proposed cost allocation or method of assessment previously proposed.

B. The city council shall hold a hearing on the final engineer's report and at that hearing shall establish by resolution the method of assessment and amount to be assessed against each specially benefited property.

C. The council in adopting a method of assessment of the costs of the improvement(s) may use any method of apportioning the sum to be assessed that the council determines to be just and reasonable among the properties in the local improvement district.

D. After the council adopts the assessment resolution, the city will schedule a council hearing and mail notice of the proposed assessments to each owner of assessed property within the district at least 10 days before the hearing. The notice shall contain:

1. The name of the owner and a description of the property to be assessed.

2. The amount of the assessment.

3. The proposed allocation and method of assessment.

4. The date, time and place of the council hearing on objections to the assessment, and the deadline to submit written objections before the hearing.

5. A statement that the assessment as stated in the notice or as modified by the council after the hearing will be levied by the council, charged against the property, and be due and payable.

E. Any mistake, error, omission or failure relating to the notice shall not invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been provided to the property owner, or if owner cannot be located, notice is published once a week for two consecutive weeks in a newspaper of general circulation in the city.

F. The council shall hold the public hearing and consider oral and written objections and comments. After the hearing, the council shall determine the amount of assessment to be charged against each property within the district according to the special benefits to each property from the improvement(s). The final decision spreading the assessment shall be by resolution.

G. If the initial assessment has been made on the basis of estimated cost, and, upon completion of the work, the cost is found to be greater than the estimated cost, the council may make a deficit assessment for the additional cost, provided, however, the council may not make a deficit assessment for more than ten (10) percent of the initial assessment. Proposed assessments upon the respective lots within the special improvement district for a proportionate share of the deficit shall be made.

notices shall be sent, opportunity for objections shall be given, any objections shall be considered, and a determination of the assessment against each particular lot, block, or parcel of land shall be made in the same manner as in the case of the initial assessment, and the deficit assessment shall be spread by resolution.

H. If assessments have been made on the basis of estimated cost and upon completion of the improvement project the cost is found to be less than the estimated cost, the council shall ascertain and declare the same by resolution, and when so declared the excess amounts shall be entered on the city lien record as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or that person's legal representative or successor, shall be entitled to repayment of the excess amount. If the property owner has filed an application to pay the assessment by installment, the owner shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of the refund shall be deducted from such assessment, and the remainder shall remain a lien on the property until legally satisfied.

12.05.065 Notice of Assessment

Within 10 days after the effective date of the resolution levying the assessments, the finance director shall send by first-class mail to the owner of the assessed property a notice containing the following information:

- A. The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed.
- B. A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this chapter.
- C. A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within 30 days of the date of the notice and, if unpaid on that date, will accrue interest and subject the property to foreclosure.

Supplementary notice of assessment in form and content to be determined by the finance director may also be published or posted by the finance director.

12.05.070 Financing of Program

- A. The City of Newport Local Improvements Fund will be used for the payment of construction costs or for the retirement of debt incurred by the City in connection with local improvement projects on which the payment of assessments has been deferred under this Ordinance.
- B. The initial funds for the program will be taken from interest earnings accumulated in the City of Newport Capital Construction Fund in an amount not to exceed 40% of the total accumulated interest earnings as of June 30 of the preceding fiscal year. Program resources shall be replenished from time to time by interest payments on deferred accounts, payments made when deferments are terminated and by additional interest revenue from the Capital Construction Fund.
- C. Deferments shall be granted on a pro rata or otherwise equitable basis, depending upon individual assessment amounts for applications received within the time period set under Section 12(3) for submittal, to the extent that Program funds are available.

12.05.075 Payment

- A. Unless an application is made for payment in installments as provided by this section, assessments shall be due and payable in full within 30 days after the date the notice of assessment is mailed, and if not so paid, shall bear interest at the rate of 9 percent per year. The city may proceed to foreclose or enforce collection of the assessment lien if the amount is not paid in full within 90 days of the date the notice of assessment is mailed.
- B. Any time within 10 days after the notice of assessment is mailed or within 10 days of resolution of any writ of review proceeding challenging the assessment, the owner of the property may apply to pay the any assessment in excess

of \$500 in ten equal annual installments, with the first payment to be paid within 10 days of the determination by the finance director of the amount of the annual payment. The application shall state:

1. That the applicant waives all irregularities or defects, jurisdictional or otherwise, in any way relating to the assessment.
 2. State that the applicant understands the terms and conditions of the city's payment policies including the penalties for nonpayment.
- C. On receipt of an application for payment in installments, the finance director shall determine whether the city will finance the payments internally or issue bonds or obtain a loan for the amount financed. The interest rate will be set at the interest rate charged to the city, plus 2%. If the city finances the payments internally, the interest rate shall be at the interest rate payable to the city if it had invested the money in a local government pool account, plus 3%. The finance director shall then notify the property owner of the payment amounts and due dates.
- D. If any installment payment is not paid within one year of the due date, the council shall adopt a resolution declaring the entire amount of principal and interest due and payable at once.
- E. The entire amount of principal and accrued interest shall be payable on any sale of the specially assessed property or change in its boundaries.

12.05.080 Lien and Foreclosure

- A. The finance director shall enter in the city lien docket:
1. A statement of the amounts assessed upon each particular lot, parcel of land or portion thereof;
 2. A description of the improvement;
 3. The names of the owners; and
 4. The date of the assessment resolution.
- B. On entry in the lien docket, the amount entered shall

become a lien and charge upon the properties that have been assessed for such improvement.

- C. All assessments liens of the city shall be superior and prior to all other liens or encumbrances on property.
- D. The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

12.05.085 Errors in Assessment Calculations

Claimed errors in the calculation of assessments shall be called to the attention of the finance director who shall determine whether there has been an error. If the finance director determines that there has been an error, the matter shall be referred to the council for an amendment of the assessment resolution. On amendment of the resolution, the finance director shall make necessary corrections in the city lien docket and send a correct notice of assessment by certified mail.

12.05.090 Abandonment of Proceedings

The council may abandon and rescind proceedings for improvements at any time prior to the final completion of the improvements. No assessment shall be imposed if improvements are not completed.

12.05.095 Curative Provisions

No improvement assessment shall be rendered invalid by a failure of any incompleteness or other defect in any engineer's report, resolution, notice, or by any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps required by this chapter, unless the assessment is unfair or unjust. The council shall have the authority to remedy or correct any matter by suitable proceedings and action.

12.05.100 Reassessment

A. Whenever all or part of an assessment or reassessment for any local improvement is declared void, set aside for any reason, not enforced by a court or the council determines the assessments should be adjusted, the council may make a new assessment but shall not be required to repeat any portion of the procedure properly completed.

B. The reassessment procedures for making the new assessment will follow the same procedures used for the initial assessment under NMC12.05.050 and 12.05.085. The new assessment is not limited to the amounts included in the original assessments or to the property included within the original assessment if the council finds that additional property is specially benefited and subject to assessment.

C. Credit must be allowed on the new assessment for any payments made on the original assessment as of the date of payment. Interest on the original assessments must be included in the new assessment to the extent the new assessment includes amounts also included in the original assessment. The council will include interest as part of the overall assessable project cost. The amount will be based on the construction financing interest rate in effect and applicable to the district at the time of the original proceedings on moneys paid on the construction or financing of the project.

~~Whenever any assessment or reassessment is set aside or its enforcement restrained by any court with jurisdiction or when the council is in doubt as to the validity of the assessment or reassessment, the council may make a reassessment in the manner provided by the state law or may follow the procedure applicable to an original assessment, but shall not be required to repeat any portion of the procedure properly completed.~~

12.05.105 Remedies

Actions of the council under this chapter are reviewable only by writ of review.

12.05.110 Interpretation and Coordination with State Law

The provisions of this chapter shall be interpreted consistent with state law relating to local improvement districts and Bancroft bonding. When state law authorizes local governments to adopt standards and procedures different from those specified in the statutes, the city may comply with either this chapter or state statutes. To the extent that any standard or procedure is not governed by this chapter, the city shall comply with state statutes.

12.05.115 Confidentiality

To the maximum extent possible under the law, the applications, records and other information relating to deferments shall be kept confidential by the City.

12.05.120 Appeals

Owners of property against which an assessment or reassessment for local improvements has been imposed may seek a review of any council decision under the provisions of ORS 34.010 to 34.102.

