Chapter 223

2017 EDITION

Local Improvements and Works Generally

SPECIAL CITY IMPROVEMENTS; PARKING FACILITIES; STREETS; SIDEWALKS; AIDS TO WATER COMMERCE

MISCELLANEOUS PROVISIONS

GENERAL PROVISIONS

223.001 Definitions. As used in ORS 223.112 to 223.132, 223.205 to 223.295, 223.297 to 223.314, 223.317 to 223.327, 223.387 to 223.399, 223.405 to 223.485, 223.505 to 223.595, 223.605 to 223.650, 223.705 to 223.755, 223.765, 223.770, 223.775 and 223.805 to 223.845, unless the context requires otherwise:

(1) "Actual cost" has the meaning given the term under ORS 310.140.

(2) "Capital construction project" means a project for "capital construction," as defined under ORS 310.140.

(3)(a) "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 local government estimates will be levied against the property following completion of the local improvement. The estimate shall be based on the local government's estimate at that time of the actual costs of the local improvement and the proposed formula for apportioning the actual costs to the property.

(b) "Estimated assessment" shall be determined by:

(A) Excluding from estimated actual costs the estimated financing costs associated with any bonds issued to accommodate the payment of the assessment in installments; and

(B) Including in estimated actual costs the estimated financing costs associated with interim financing of the local improvement.

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

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

(b) The costs of financing may include the salaries, wages and benefits payable to employees of the local government to the extent the same are reasonably allocable to the work or services performed by the employees in connection with the financing of a local improvement or any part thereof. However, as a condition to inclusion of any salaries, wages or benefits payable to employees of a local government as financing costs of a local improvement or any part thereof, the local government shall establish a record keeping system to track the actual work done or services performed by each employee on or in connection with such local improvement.

(c) Financing costs that are to be incurred after the levy of a final assessment may be included in the final assessment based on the local government's reasonable estimate of the financing costs if the local government first documents the basis for the estimate and makes the documentation available to interested persons on request.

(6) "Governing body" means the council, commission, board or other controlling body, however designated, in which the legislative powers of a local government are vested.

(7) "Installment application" means an application filed by a property owner to have a final assessment paid in installments over a period of years.

(8) "Local government" means a local government as defined in ORS 174.116 that has authority to undertake the acquisition, construction, reconstruction, repair, betterment or extension of a local improvement.

(9) "Local improvement" has the meaning given the term under ORS 310.140.

(10) "Lot" means a lot, block or parcel of land.

(11) "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 county assessor.

(12) "Recorder" means the auditor, recorder, clerk or other person or officer of a local government serving as clerk of the local government or performing the clerical work of the local government, or other official or employee as the governing body of a local government shall designate to act as recorder.

(13) "Structure" has the meaning given the term under ORS 310.140.

(14) "Treasurer" means the elected or appointed official of a local government, however designated, charged by law with the responsibility for acting as custodian of and investment officer for the public moneys of the local government. [1991 c.902 §3; 2003 c.802 §2; 2017 c.283 §3]

APPROPRIATION AND CONDEMNATION OF PROPERTY FOR CITY PURPOSES; SPECIAL PROCEDURE

223.005 Appropriation and condemnation for public use within and without city limits. Any incorporated city may:

(1) Appropriate any private real property, water, watercourse and riparian rights to

any public or municipal use or for the general benefit and use of the people of the city, including but not limited to appropriation for an aviation field, park, city hall, city buildings, jail, or to protect the city from overflow by freshets.

(2) Appropriate any real property, water, watercourse and water and riparian rights, including power sites, to any public or municipal use or for the general benefit and use of the people within or without the city, and to build dams, reservoirs and conduits for the purpose of storing and using water to aid in developing the necessary power to generate electricity for the use and benefit of the people within or without the city.

(3) Condemn for its use private property for the purpose of erecting and maintaining electric lines thereon for the purpose of generating and conveying power to light and heat the city, and to be used and sold by the city for manufacturing, transportation, domestic and other purposes, either within or without the corporate limits of the city, and for the purpose of constructing electrical systems for municipal uses. [Amended by 1971 c.134 §1]

223.010 Right of city to enter upon, survey, examine and select property to be appropriated or condemned. For the purposes of ORS 223.005, a city may enter upon, survey and examine property in the manner provided by ORS 35.220 and may select any such property or rights for the purpose of constructing any ditch, drain, dam, dike, canal, flume, sewer, reservoir, septic tank, filter bed, sewer form or purifying plant or laying or constructing and maintaining any pipe, sewer, drain, aqueduct, dam, dike, canal, flume, reservoir, septic tank, filter bed, sewer form or purifying plant or other plant, building or electric lines or system for municipal uses, including but not limited to, aviation fields, parks, city hall, city buildings, jails, docks, piers, slips, shore and terminal structures. [Amended by 1971 c.134 §2; 2003 c.477 §4]

223.015 Manner of appropriation or condemnation; compensation. After selection of such rights and property under ORS 223.010 in such manner as the council provides, the city seeking to make the appropriation may proceed in the manner prescribed by the statutes for the appropriation of land for corporate purposes, and not otherwise, unless otherwise provided by law, to have such property appropriated and the compensation therefor determined and paid. However, the compensation for such condemnation by a city shall be paid by a deposit in the court of an order drawn upon the city treasurer for the amount of compensation.

223.020 Scope of appropriation. Appropriation of property under ORS 223.005 may extend beyond the corporate limits of the city to or along and including any lake, spring, stream or power site.

223.025 [Repealed by 1963 c.297 §1]

223.030 [Repealed by 1963 c.297 §1]

223.035 [Repealed by 1963 c.297 §1]

223.040 [Repealed by 1963 c.297 §1]

MUNICIPAL CONDEMNATION PROCEEDINGS

223.105 Proceedings to condemn property for city improvements when owner and city disagree on price. (1) The provisions of this section apply to every city, whether organized under general law or otherwise.

(2) Whenever the council of any incorporated city deems it necessary to take or damage private property for the purpose of establishing, laying out, extending or widening streets, or other public highways and places within any city, or for rights of way for drains, sewers or aqueducts, or for widening, straightening or diverting channels of streams and the improvement of waterfronts, and the council cannot agree with the owner of the property as to the price to be paid, the council may direct proceedings to be taken under the general laws of this state to procure the same.

223.110 [Repealed by 1971 c.741 §38]

ECONOMIC IMPROVEMENT DISTRICTS

223.112 Definitions for ORS 223.112 to 223.132. As used in ORS 223.112 to 223.132, unless the context requires otherwise:

(1) "Council" means the city council or other controlling body of a city.

(2) "Economic improvement" means:

(a) The planning or management of development or improvement activities.

(b) Landscaping or other maintenance of public areas.

(c) Promotion of commercial activity or public events.

(d) Activities in support of business recruitment and development.

(e) Improvements in parking systems or parking enforcement.

(f) Any other economic improvement activity for which an assessment may be made on property specially benefited thereby. [1985 c.576 §1; 1991 c.902 §4]

223.114 Economic improvement; assessment ordinance. (1) A council may enact an ordinance establishing a procedure to be followed by the city in making assess-

ments for the cost of an economic improvement upon the lots which are specially benefited by all or part of the improvement.

(2) In any ordinance adopted under subsection (1) of this section, a city shall not be authorized to:

(a) Levy assessments in an economic improvement district in any year that exceed one percent of the real market value of all the real property located within the district.

(b) Include within an economic improvement district any area of the city that is not zoned for commercial or industrial use.

(c) Levy assessments on residential real property or any portion of a structure used for residential purposes. [1985 c.576 §2; 1989 c.1018 §3; 1991 c.459 §350; 1991 c.902 §5]

223.115 [Repealed by 1971 c.741 §38]

223.117 Requirements of assessment ordinance. (1) An ordinance adopted under ORS 223.114, shall provide for enactment of an assessment ordinance that:

(a) Describes the economic improvement project to be undertaken or constructed.

(b) Contains a preliminary estimate of the probable cost of the economic improvement and the proposed formula for apportioning cost to specially benefited property.

(c) Describes the boundaries of the district in which property will be assessed.

(d) Specifies the number of years, to a maximum of five, in which assessments will be levied.

(e) Contains provision for notices to be mailed or delivered personally to affected property owners that announce the intention of the council to construct or undertake the economic improvement project and to assess benefited property for a part or all of the cost. The notice shall state the time and place of the public hearing required under paragraph (f) of this subsection.

(f) Provides for a hearing not sooner than 30 days after the mailing or delivery of notices to affected property owners at which the owners may appear to support or object to the proposed improvement and assessment.

(2) The ordinance shall also:

(a) Provide that if, after the hearing held under subsection (1)(f) of this section, the council determines that the economic improvement shall be made, the council shall determine whether the property benefited shall bear all or a portion of the cost and shall determine, based on the actual or estimated cost of the economic improvement, the amount of assessment on each lot in the district.

(b) Require the city recorder or other person designated by the council to prepare the proposed assessment for each lot in the district and file it in the appropriate city office.

(c) Require notice of such proposed assessment to be mailed or personally delivered to the owner of each lot to be assessed, which notice shall state the amount of the assessment proposed on the property of the owner receiving the notice. The notice shall state the time and place of a public hearing at which affected property owners may appear to support or object to the proposed assessment. The hearing shall not be held sooner than 30 days after the mailing or personal delivery of the notices.

(d) Provide that the council shall consider such objections and may adopt, correct, modify or revise the proposed assessments.

(e) Provide that the assessments will not be made and the economic improvement project terminated when written objections are received at the public hearing from owners of property upon which more than 33 percent of the total amount of assessments is levied. [1985 c.576 §3; 1989 c.1018 §4]

223.118 Remonstrance against assessment; exclusion of property. (1) In addition to the requirements listed in ORS 223.117 (2), an assessment ordinance adopted under ORS 223.114 and 223.117 may, at the discretion of the council, provide that:

(a) When the council receives written objections at the public hearing only from owners of property upon which less than 33 percent of the total amount of assessments is levied, the economic improvement project may be undertaken or constructed, but that assessments shall not be levied on any lot or parcel of property if the owner of that property submitted written objections at the public hearing. Notwithstanding any other provision of law, an owner of property who fails to submit written objections at the public hearing as provided for in the ordinance shall be deemed to have made a specific request for the economic improvement services to be provided during the period of time specified in the assessment ordinance.

(b) The council, after excluding from assessment property belonging to such owners, shall determine the amount of assessment on each of the remaining lots or parcels in the district.

(c) Notice of such proposed assessment be mailed or personally delivered to the owner of each lot to be assessed, which notice shall state the amount of the assessment proposed on the property of the owner receiving the notice.

(2) When assessments are levied against property within an economic improvement district in accordance with an assessment

ordinance that contains the provisions described in subsection (1) of this section:

(a) Any new owner of benefited property in the district or any owner of benefited property who excluded the property from assessment by submitting written objections to the council may subsequently agree to the assessment of the owner's property in the district. The council shall apportion the costs to the property for the remaining time in which assessments will be levied.

(b) The assessed property may not be relieved from liability for that assessment.

(c) If the council considers it necessary to levy assessments upon property in the district for longer than the period of time specified in the assessment ordinance, the council shall enact an ordinance that provides for continued assessments for a specified number of years and grants to property owners in the district the notice and right of remonstrance described in ORS 223.117 (2)(b) to (e) and subsection (1)(a) to (c) of this section. [1991 c.773 §2]

223.119 Advisory committee; functions. An ordinance adopted under ORS 223.114, may require creation, for each economic improvement district, of an advisory committee to allocate expenditure of moneys for economic improvement activities within the scope of ORS 223.112 to 223.132. If an advisory committee is created, the council shall strongly consider appointment of owners of property within the economic improvement district to the advisory committee. An existing association of property owners or tenants may enter into an agreement with the city to provide the proposed economic improvement. [1985 c.576 §4; 1989 c.1018 §5]

223.120 [Repealed by 1971 c.741 §38]

223.122 Effect of local improvement districts or urban renewal districts. The existence of local improvement districts or urban renewal districts in a city does not affect the creation of economic improvement districts under ORS 223.112 to 223.132. [1985 c.576 §5]

223.124 Extension of assessment period. When the council considers it necessary to levy assessments upon property in an economic improvement district for longer than the period of time specified in the assessment ordinance that created the district, the council shall enact an ordinance that provides for continued assessments for a specified number of years and grants to property owners in the district the notice and right of remonstrance described in ORS 223.117 (2)(b) to (e). [1985 c.576 §6]

223.125 [Repealed by 1971 c.741 §38]

223.127 Application of certain assessment statutes to economic improvement districts. (1) ORS 223.387 and 223.391 to 223.395 apply to economic improvement districts created by a city in accordance with ORS 223.112 to 223.132.

(2) The rights and duties accorded local governments and the owners of property for financing assessments under ORS 223.205 and 223.210 to 223.295 apply to assessments levied upon property in an economic improvement district for financing all or part of the cost of an economic improvement. [1985 c.576 §7; 1991 c.902 §6; 2003 c.802 §3]

223.129 Expenditure of assessment revenues; liability for unauthorized expenditures. (1) A city council shall not expend any moneys derived from assessments levied under ORS 223.112 to 223.132 for any purpose different from the purpose described in the ordinance adopted under ORS 223.114.

(2) Any public official who expends any moneys derived from assessments levied under ORS 223.112 to 223.132 for any purpose different from the purpose described in an ordinance adopted under ORS 223.114 shall be civilly liable for the return of the moneys by suit of the district attorney of the county in which the city is located or by suit of any taxpayer of the city. [1985 c.576 §8]

223.130 [Repealed by 1971 c.741 §38]

223.132 Formation of economic improvement districts as additional power of cities. The authority granted to cities by ORS 223.112 to 223.132, is in addition to any other authority a city may have under state law, its charter or its ordinances to create or finance economic improvement districts. [1989 c.1018 §2]

223.135 [Repealed by 1971 c.741 §38]

223.140 [Repealed by 1971 c.741 §38]

223.141 Definitions for ORS 223.141 to 223.161. As used in ORS 223.141 to 223.161, unless the context requires otherwise:

(1) "Business license fee" means any fee paid by a person to a city for any form of license that is required by the city in order to conduct business in that city.

(2) "Conducting business" means to engage in any business, trade, occupation or profession in pursuit of gain including activities carried on by a person through officers, agents and employees as well as activities carried on by a person on that person's own behalf.

(3) "Council" means the city council or other controlling body of a city.

(4) "Economic improvement" means:

(a) The planning or management of development or improvement activities.

(b) Landscaping or other maintenance of public areas.

(c) Promotion of commercial activity or public events.

(d) Activities in support of business recruitment and development.

(e) Improvements in parking systems or parking enforcement.

(f) Any other economic improvement activity for which an assessment may be made on property specially benefited thereby. [1991 c.698 §1]

223.144 Economic improvement district; business license fee ordinance. (1) A council, on its own motion or after receiving a petition for the formation of an economic improvement district signed by 33 percent or more of persons conducting business within the proposed district, may enact an ordinance establishing a procedure to be followed by the city in imposing a business license fee to raise revenue for the cost of an economic improvement. The business license fee authorized under this subsection may be in the form of a surcharge on an existing business license fee imposed by the city on any business, trade, occupation or profession carried on or practiced in the economic improvement district.

(2) In any ordinance adopted under subsection (1) of this section, a city shall not be authorized to:

(a) Include within an economic improvement district any area of the city that is not zoned for commercial or industrial use.

(b) Impose a business license fee to raise revenue for an economic improvement that does not primarily benefit persons conducting business within the economic improvement district. [1991 c.698 §2]

223.145 [Repealed by 1971 c.741 §38]

223.147 Requirements of business license fee ordinance. (1) An ordinance adopted under ORS 223.144, shall provide for enactment of a business license fee ordinance that:

(a) Describes the economic improvement project to be undertaken or constructed.

(b) Contains a preliminary estimate of the probable cost of the economic improvement.

(c) Describes the boundaries of the district in which property will be assessed.

(d) Specifies the number of years, to a maximum of five, in which business license fees for the economic improvement will be imposed.

(e) Contains provision for notices to be mailed or delivered personally to affected persons that announce the intention of the council to construct or undertake the economic improvement project and to impose a business license fee upon persons conducting business within the district for a part or all of the cost. The notice shall state the time and place of the public hearing required under paragraph (f) of this subsection.

(f) Provides for a hearing not sooner than 30 days after the mailing or delivery of notices to affected persons at which the persons may appear to support or object to the proposed improvement and business license fee.

(2) The ordinance shall also:

(a) Provide that if, after the hearing held under subsection (1)(f) of this section, the council determines that the economic improvement shall be made, the council shall determine whether the businesses benefited shall bear all or a portion of the cost and shall determine, based on the actual or estimated cost of the economic improvement, the amount of the business license fee.

(b) Require notice of such proposed business license fee to be mailed or personally delivered to each person conducting business within the proposed economic improvement district, which notice shall state the amount of the business license fee. The notice shall state the time and place of a public hearing at which affected persons may appear to support or object to the proposed business license fee. The hearing shall not be held sooner than 30 days after the mailing or personal delivery of the notices.

(c) Provide that the council shall consider the objections of persons subject to the proposed business license fee and may adopt, correct, modify or revise the proposed business license fee.

(d) Provide that the business license fee will not be imposed and the economic improvement project terminated when written objections are received at the public hearing from more than 33 percent of persons conducting business within the economic improvement district who will be subject to the proposed business license fee. [1991 c.698 §3]

223.150 [Repealed by 1971 c.741 §38]

223.151 Advisory committee; functions. An ordinance adopted under ORS 223.144, may require creation, for each economic improvement district, of an advisory committee to develop a plan and to allocate expenditure of moneys for economic improvement activities within the scope of ORS 223.141 to 223.161. If an advisory committee is created, the council shall appoint persons conducting business within the economic improvement district to the advisory committee. An existing association of persons conducting business within an economic improve-

ment district may enter into an agreement with the city to provide the economic improvement. [1991 c.698 §4]

223.154 Extension of business licensing period. When the council considers it necessary to impose business license fees upon persons conducting business in an economic improvement district for longer than the period of time specified in the ordinance that created the district, the council shall enact an ordinance that provides for continued business license fees for a specified number of years and grants to persons conducting business in the district the notice and right of remonstrance described in ORS 223.147 (2)(b) to (d). [1991 c.698 §5]

223.155 [Repealed by 1971 c.741 §38]

223.157 Expenditure of business license fees; liability for unauthorized expenditures. (1) A city council shall not expend any moneys derived from business license fees levied under ORS 223.141 to 223.161 for any purpose different from the purpose described in the ordinance adopted under ORS 223.144.

(2) Any public official who expends any moneys derived from business license fees levied under ORS 223.141 to 223.161 for any purpose different from the purpose described in an ordinance adopted under ORS 223.144 shall be civilly liable for the return of the moneys by suit of the district attorney of the county in which the city is located or by suit of any taxpayer of the city. [1991 c.698 §6]

223.160 [Repealed by 1971 c.741 §38]

223.161 Effect of local improvement districts or urban renewal districts. (1) The existence of local improvement districts or urban renewal districts in a city does not affect the creation of economic improvement districts under ORS 223.141 to 223.161.

(2) The authority granted to cities by ORS 223.141 to 223.161 is in addition to any other authority a city may have under state law, its charter or its ordinances to create or finance economic improvement districts. [1991 c.698 §7]

223.165 [Repealed by 1971 c.741 §38]

223.170 [Repealed by 1971 c.741 §38]

223.175 [Repealed by 1971 c.741 §38]

FINANCING LOCAL IMPROVEMENTS (BANCROFT BONDING ACT)

223.205 Scope and application; validation of bond issues by cities of 100,000 or more. (1) ORS 223.205 and 223.210 to 223.295 may be cited as the Bancroft Bonding Act.

(2) The provisions of the Bancroft Bonding Act are not mandatory. Any governmental body having charter provisions, or ordinance provisions authorized by charter, for bonding improvement assessments and selling bonds may follow those provisions or the provisions of the Bancroft Bonding Act, or the provisions of any other statute.

(3) All bonds issued prior to March 20, 1939, in accordance with the charter provisions of any city which, as of March 20, 1939, has or after that date attains a population of 100,000 or more inhabitants, according to the published federal census, and all action taken and proceedings adopted by a city prior to that date for issuing bonds in accordance with charter provisions are ratified, approved and confirmed. [Amended by 1957 c.103; §1; 1959 c.653 §1; 1965 c.282 §2; 1975 c.642 §1; 1991 c. 902 §7]

223.207 Purpose of ORS 223.208. The Legislative Assembly hereby declares that the purpose of ORS 223.208 and this section is to provide purchasers of homes or multifamily dwellings with Bancroft financing of system development charges as an alternative to absorbing those charges into the long-term permanent financing of their homes. [1977 c.722 §2]

223.208 System development and connection charges of local government subject to Bancroft Bonding Act. (1) Subject to subsection (2) of this section, the rights and duties accorded local governments and the owners of property for financing and assessments under ORS 223.205 to 223.775 shall apply to the following:

(a) A system development charge designed to finance the purchase or development of a public park or recreational facility or the construction, extension or enlargement of a street, community water supply, storm sewer or sewerage or disposal system as defined in ORS 199.464 imposed by a local government as a condition to issuance of any occupancy permit or imposed by a local government at such other time as, by ordinance, it may determine.

(b) That portion of a connection charge imposed by a local government that is greater than the amount necessary to reimburse the local government for its costs of inspection and installing connections with system mains.

(2) Notwithstanding ORS 223.230, the financing of system development or connection charges under this section may, at the option of the governing body, be a second lien on real property, which lien shall be inferior only to the mortgage or other security interest held by the lender of the owner's purchase money. Bonds issued under this subsection shall be issued separately from bonds otherwise issued under ORS 223.205 to 223.775 and shall comply with all applicable federal regulations. [1977 c.722 §3; 1979 c.837 §1;

1983 c.349 §1; 1991 c.902 §8; 1997 c.249 §62; 2001 c.662 §1; 2003 c.802 §4]

223.210 Right of property owners to apply for installment payment of assessment. (1) If the governing body of a local government has proceeded to cause any local improvement to be constructed or made within the corporate limits of the local government, and has determined the final assessment for the local improvement against the property benefited thereby or liable therefor, according to applicable law, the local government 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 local government for payment of the final assessment in installments as provided in this section. A copy of the notice shall be mailed or personally delivered to the owner of each lot to be assessed.

(2) The owner of any property to be so assessed, at any time within 10 days after notice of final assessment is first published, may file with the recorder a written application to pay:

(a) The whole of the final assessment in installments; or

(b) If part of the final assessment has been paid, the unpaid balance of the assessment in installments.

(3) At the option of the local government, an installment application may be filed more than 10 days after notice of the final assessment is first published. [Amended by 1957 c.103 §2; 1957 c.397 §1; 1967 c.239 §1; 1991 c.902 §9; 2003 c.802 §5]

223.212 Right of educational, religious, fraternal or charitable organizations and public corporations to bond the assessment. Any educational, religious, fraternal or charitable organization or public corporation owning property assessed for its proportionate share of the cost of constructing a local improvement shall have the same right to bond the final assessment therefor and having bonded the final assessment shall be subject to the same duties and liabilities as a natural person bonding an assessment. However, the limitations on the amount of an assessment that may be bonded do not apply to an educational, religious, fraternal or charitable organization or public corporation. The organization or public corporation shall be permitted to bond to the full extent of the assessment. [1957 c.95 §2; 1991 c.902 §10]

223.215 Contents of application to pay in installments; computation of installments. (1)(a) The installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual cost of the local improvement.

(b) The application shall provide that the applicant agrees to pay the final assessment over a period of not less than 10 years nor more than 30 years and according to such terms as the governing body of the local government may provide. The governing body may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than 10 years and according to such terms as the governing body may provide.

(c) The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the governing body of the local government on all unpaid assessments, together with an amount, determined by the governing body, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under ORS 223.235, including but not limited to legal, printing and consultant's fees.

(d) 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.

(2) In connection with the final assessments for any local improvement, the governing body of the local government may establish a procedure by which an owner of any property to be assessed may irrevocably elect in writing to have the final assessment levied for a number of years less than 10, which shall be determined by the governing body. The written election shall:

(a) Be signed by the owner or a duly authorized representative of the owner;

(b) Contain a description of the assessed property and the local improvement for which the assessment is made; and

(c) Contain a statement by the owner acknowledging that the improvement is a local improvement as described under ORS 223.001 (9), that payment of the final assessment against the properties benefited by the local improvement plus interest may be spread over at least 10 years and that, notwithstanding any provision of law, the owner consents to make payments over a period of less than 10 years and to have the assessment levied on the benefited property accordingly.

(3) The election under subsection (2) of this section shall be recorded in the bond 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 or any part thereof. [Amended by 1957 c.103 §3; 1959 c.653 §2; 1969 c.531 §1; 1971 c.100 §1; 1975 c.320 §1; 1981 c.322 §1; 1985 c.656 §1; 1991 c.902 §11; 2003 c.802 §6]

223.220 [Amended by 1957 c.103 §4; 1957 c.397 §2; 1975 c.642 §2; repealed by 1991 c.902 §121]

223.225 Record of application to be kept. The recorder of the local government shall:

(1) Keep all applications filed under ORS 223.210 in convenient form for examination. The applications received for each local improvement shall be separate.

(2) Enter in a book kept for that purpose, under separate heads for each local improvement, the date of filing of each application, the name of the applicant, a description of the property and the amount of the final assessment, as shown in the application. [Amended by 1957 c.103 §5; 1991 c.902 §12; 2003 c.802 §7]

223.230 Lien docket; interest; priority; public access. (1) After expiration of the time for filing application under ORS 223.210, the local government shall enter in a docket kept for that purpose, under separate heads for each local improvement, by name or number, a description of each lot or parcel of land or other property against which the final assessment is made, or which bears or is chargeable for a portion of the actual cost of the local improvement, with the name of the owner and the amount of the unpaid final assessment. The entries shall be made as of the date of initial determination and levy of the final assessment.

(2) The docket shall stand thereafter as a lien docket as for ad valorem property taxes assessed and levied in favor of the local government against each lot or parcel of land or other property, until paid, for the following:

(a) For the amounts of the unpaid final assessments therein docketed, with interest on the installments of the final assessments at the rate determined by the governing body of the local government under ORS 223.215; and

(b) For any additional interest or penalties imposed by the local government with respect to any installments of final assessments that are not paid when due.

(3) All unpaid final assessments together with accrued and unpaid interest and penalties are a lien on each lot or parcel of land or other property, respectively, in favor of the local government, and the lien shall have priority over all other liens and encumbrances whatsoever.

(4) For a local improvement district assessment lien or system development charge installment payment contract lien to continue, each local government shall make the appropriate lien record, as prescribed by this section and ORS 223.393, available on hard copy or through an online electronic medium. [Amended by 1957 c.103 §6; 1959 c.653 §3; 1969 c.531 §2; 1975 c.642 §2a; 1981 c.94 §10; 1981 c.322 §2; 1991 c.902 §13; 1995 c.709 §2; 1997 c.840 §2; 2003 c.195 §10; 2005 c.46 §1]

223.235 Issuance of bonds; limitations. (1) When in any local government a bond lien docket is made up, as provided in ORS 223.230, as to the final assessments for any local improvement, the local government shall by ordinance or resolution of the governing body authorize the issue of its bonds pursuant to the applicable provisions of ORS chapter 287A and in accordance with this section.

(2) The bonds authorized to be issued under this section must be issued in an amount that does not exceed the unpaid balance of all final assessments for the related local improvements, plus the amounts necessary to fund any debt service reserve and to pay any other financing costs associated with the bonds.

(3)(a) If the question of the issuance of the specific bonds has been approved by the electors of the local government and the bonds are issued as general obligation bonds, the local government shall each year assess, levy and collect a tax on all taxable property within its boundaries. The amount of the tax must be sufficient to pay all principal 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 local government shall:

(A) Deduct from the total amount otherwise required the amount of final installment payments that are pledged to the payment of the bonds and that are due and payable in that year; and

(B) Add to this net amount the amount of reasonably anticipated delinquencies in the payments of the installments or the taxes.

(b) The taxes must be levied in each year and returned to the county officer whose duty it is to extend the tax roll within the time and in the manner provided in ORS 310.060.

(c) The taxes become payable at the same time and are collected by the same officer who collects county taxes and must be

turned over to the local government according to law.

(d) The county officer whose duty it is to extend the county levy shall extend the levy of the local government in the same manner as city taxes are extended. Property may be sold for nonpayment of the taxes levied by a local government in like manner and with like effect as in the case of county and state taxes.

(4)(a) All bonds issued pursuant to this section, including general obligation bonds, are secured by and payable from the installments of final assessments with respect to which the bonds were issued.

(b) In the ordinance or resolution authorizing the issuance of the bonds, the governing body of the issuing local government may:

(A) Provide that installments of final assessments levied with respect to two or more local improvements shall secure a single issue of bonds.

(B) Reserve the right to pledge, as security for any bonds thereafter issued pursuant to this section, any installments of final assessments previously pledged as security for other bonds issued pursuant to this section.

(c) All bonds must be secured by a lien on the installments of final assessments with respect to which they were issued. The lien is valid, binding and fully perfected from the date of issuance of the bonds. The installments of final assessments are immediately subject to the lien without the physical delivery thereof, the filing of any notice or any further act. The lien is valid, binding and fully perfected against all persons having claims of any kind against the local government or the property assessed whether in tort, contract or otherwise, and irrespective of whether the persons have notice of the lien.

(5) As additional security for any bonds issued under this section, including general obligation bonds, the governing body of the issuing local government 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 ORS chapter 287A.

(6)(a) A local government may, from time to time after the undertaking of a local improvement has been authorized, borrow money and issue and sell notes for the purpose of providing interim financing for the actual costs of the local improvement.

(b) 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.

(c) Notes authorized under this subsection may not mature later than one year after the date upon which the issuing local government expects to issue bonds for the purpose of providing permanent financing with respect to installment payments of the final assessments for the local improvements.

(d) Any notes authorized under this subsection may be refunded from time to time by the issuance of additional notes or out of the proceeds of bonds issued pursuant to this section. The notes may be made payable from the proceeds of any bonds to be issued under this section to provide permanent financing or from any other sources from which the bonds are payable.

(e) The governing body of the issuing local government may pledge to the payment of the notes any revenues that may be pledged to the payment of bonds authorized to be issued under this section with respect to the local improvements for which the notes provide interim financing. [Amended by 1957 c.103 §7; 1959 c.653 §4; 1967 c.196 §1; 1975 c.320 §2; 1975 c.738 §1; 1983 c.349 §2; 1991 c.902 §14; 1995 c.333 §1; 2003 c.802 §8; 2005 c.443 §1; 2007 c.783 §74]

223.240 [Amended by 1959 c.653 §5; 1971 c.100 §2; 1975 c.320 §3; 1975 c.642 §3; repealed by 1991 c.902 §121]

223.245 Budget to include bond payments. The interest on the bonds and the amounts of the installments of maturing bonds shall be included in the annual budget of the issuing local government. There shall be deducted in the budget the amount that the governing body conservatively estimates will be received from payments of the principal of and interest on installments of final assessments appertaining to the particular bond issue, and from receipts from sales and rentals of property acquired by the local government pursuant to the assessments, during the fiscal year. [Amended by 1983 c.349 §3; 1991 c.902 §15; 2003 c.802 §9]

223.250 [Amended by 1971 c.183 §1; 1975 c.642 §4; 1981 c.94 §11; 1983 c.349 §4; repealed by 1991 c.902 §121]

223.255 [Amended by 1957 c.103 §8; 1967 c.239 §2; 1983 c.349 §5; repealed by 1991 c.902 §121]

223.260 Sale of bonds; disposition of proceeds from bond sales. (1) The proceeds of any bonds or notes authorized to be issued under ORS 223.235 shall be paid by the purchaser to the treasurer of the issuing local government. Accrued interest and any premium may be credited to any account designated by the issuing local government. The balance of the proceeds shall be credited to the local improvement fund or funds for which the bonds or notes are issued.

(2) A local government may create, within the Bancroft Bond Redemption Fund maintained by the local government as required by ORS 223.285, separate accounts for separate issues of bonds or notes issued as

provided in 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. [Amended by 1957 c.103 §9; 1975 c.642 §5; 1983 c.349 §6; 1991 c.902 §16; 2003 c.802 §10]

223.262 Assessment contracts; transfer of contract rights by local government; use of proceeds. (1) As used in ORS 223.205 and 223.210 to 223.295:

(a) "Assessment contract" means the obligation to pay final assessments in installments that arise when a property owner submits an application to pay assessments in installments under ORS 223.210 or a similar provision of a local charter.

(b) "Assessment contract rights" includes the right to receive installment payments of final assessments, with interest, made under an assessment contract, and the right to enforce the lien of the final assessment.

(2) Any local government that receives or expects to receive assessment contracts may:

(a) Sell or assign to third parties all or any portion of its assessment contract rights.

(b) Create corporations or other business entities to factor assessment contract rights.

(c) Create grantor trusts and transfer to the trusts assessment contract rights.

(d) Contract to service assessment contracts and assessment liens for the owners of assessment contract rights, or contract with third parties to service assessment contracts and assessment liens for the owners of assessment contract rights.

(e) Serve as a trustee for the owners of assessment contract rights.

(f) Enter into contracts necessary to carry out the provisions of this section.

(3) Any trust created under this section may fractionalize and sell assessment contract rights.

(4) Assessment contract rights, any interests therein and any interests in trusts secured primarily by assessment contract rights shall be exempt from registration under ORS 59.055.

(5) If assessment contract rights that secure outstanding obligations of a local government are sold or assigned under this section, an amount shall be placed irrevocably in escrow that is calculated to be sufficient to pay all principal and interest on the outstanding obligations as they mature or are irrevocably called for prior redemption. Any sale proceeds not required to fund the escrow may be placed in the general fund of the local government. If only a portion of the contract rights securing outstanding obligations is sold, then the amount of outstanding obligations that must be defeased pursuant to this subsection shall be that proportion of the principal amount of the outstanding obligations that the principal amount of the contract rights that are sold represents to the total principal amount of the contract rights that secure the outstanding obligations. [1989 c.603 §2; 1991 c.902 §17; 2003 c.802 §11; 2007 c.783 §75]

223.265 Payment of installments; due dates. (1) The installments due and payable under an assessment contract shall be due and payable periodically as the governing body of the local government shall determine but shall not be due and payable over a term in excess of 30 years. Each installment is due and payable with interest as described under subsection (3) of this section.

(2) The installments and interest are payable to the treasurer by the property owner whose application to pay the cost of the local improvement by installments has been filed as provided in ORS 223.210.

(3) The amount of each installment (percentage of the total final assessment) shall be determined by the governing body of the local government and shall be as appears by the bond lien docket described in ORS 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 governing body of the local government under ORS 223.215.

(4) The first payment shall be due and payable on the date that the governing body shall determine, and subsequent payments shall be due and payable on subsequent periodic dates thereafter as shall have been determined by the governing body. [Amended by 1957 c.103 §10; 1959 c.653 §6; 1969 c.531 §3; 1971 c.100 §3; 1975 c.320 §4; 1981 c.322 §4; 1991 c.902 §18; 2003 c.802 §12]

223.270 Procedure for collection on default. (1) If the owner neglects or refuses to pay installments under ORS 223.265 as they become due and payable for a period of one year, then the governing body of the local government may, by reason of the neglect or refusal to pay the installments, and while the neglect and refusal to pay continues, pass a resolution:

(a) Giving the name of the owner then in default in the payment of the sums due;

(b) Stating the sums due, either principal or interest and any unpaid late payment penalties or charges;

(c) Containing a description of the property upon which the sums are owing; and

(d) Declaring the whole sum, both principal and interest, due and payable at once.

(2) The governing body may then proceed at once to collect all unpaid installments and to enforce collection thereof, with all unpaid late payment penalties and charges added thereto, in the same manner in which delinquent property taxes are collected under applicable law or, in the case of a city, in the same manner as street and sewer assessments are collected pursuant to the terms of the city charter. [Amended by 1991 c.902 §19; 2003 c.802 §13]

223.275 Notice to pay; receipts and entries on lien docket. The recorder of a local government shall, when installments and interest on any final assessment in the bond lien docket are due, make the proper extensions of the installments and interest on the bond lien docket and turn the same over to the treasurer of the local government. The treasurer then shall notify the property owner that the installments are due and payable, but a failure of any owner to receive the notice shall not prevent collection of the installment as provided in ORS 223.270. The treasurer shall issue a receipt to the person paying the installments and interest, and shall file duplicates of the receipts with the recorder. When the treasurer returns the bond lien docket, the recorder shall make the proper entries on the bond lien docket showing the amount of each payment and the date of the payment. [Amended by 1991 c.902 §20; 2003 c.802 §14]

223.280 Right of owner to prepay balance and discharge lien. At any time after issuance of bonds under ORS 223.235, any owner of a lot against which the final assessment is made and lien docketed may pay into the treasury of the issuing local government the whole amount of the final assessment for which the lien is docketed, together with the full amount of interest and late payment penalties and charges accrued thereon to the date of payment. Upon producing to the recorder of the local government the receipt of the treasurer, the recorder shall enter in the lien docket opposite the entry of the lien the fact and date of the payment and that the lien is discharged. [Amended by 1991 c.902 §21; 2003 c.802 §15]

223.285 Separate funds kept for moneys received; investments authorized. Any treasurer receiving any payments of final assessments or interest on unpaid installments by virtue of the Bancroft Bonding Act, shall account for the payments separately from other funds of the local government. The amount of the moneys paid on account of installments, interest on unpaid installments and late payment penalties or charges, shall be placed to the credit of a fund to be known and designated as "Bancroft Bond Redemption Fund" or in any designated account of the redemption fund that may be established by the local government under this section. All interest and principal due on bonds issued under ORS 223.235 shall be paid from the redemption fund or from a designated account of the redemption fund. The amount placed to the credit of the redemption fund or any account of the fund shall from time to time, under the direction of the governing body of the issuing local government, be invested as provided in ORS 294.035 or 294.805 to 294.895. [Amended by 1975 c.495 §1; 1991 c.902 §22; 2003 c.802 §16]

223.290 Payments entered on lien docket; lien discharge. Entries of payments of installments, interest and late payment penalties or charges, made under the Bancroft Bonding Act, shall be made in the lien docket as they are received, with the date of payment. The payments so made and entered shall discharge the lien to the amount of the payment and from the date of the payment. [Amended by 1991 c.902 §23; 1995 c.709 §3; 1997 c.840 §3]

223.295 Limit on city indebtedness. (1) A city may incur indebtedness in the form of general obligation bonds and general obligation interim financing notes pursuant to ORS 223.235 to an amount which shall not exceed 0.03 of the latest real market valuation of the city.

(2) The general obligation bonds and general obligation interim financing notes issued pursuant to ORS 223.235 shall be determined by deducting from the sum total of outstanding general obligation bonds and general obligation interim financing notes issued pursuant to ORS 223.235, the aggregate of sinking funds or other funds applicable to the payment thereof, less the aggregate of overdrafts, if any, in the related improvement bond interest fund. [Amended by 1955 c.28 §1; 1955 c.686 §1; 1959 c.653 §7; 1963 c.545 §2; 1965 c.282 §3; 1985 c.441 §1; 1991 c.459 §351; 1991 c.902 §24]

SYSTEM DEVELOPMENT CHARGES

223.297 Policy. The purpose of ORS 223.297 to 223.314 is to provide a uniform framework for the imposition of system development charges by local governments, to provide equitable funding for orderly growth and development in Oregon's communities and to establish that the charges may be used only for capital improvements. [1989 c.449 §1; 1991 c.902 §25; 2003 c.765 §1; 2003 c.802 §17]

Note: 223.297 to 223.314 were added to and made a part of 223.205 to 223.295 by legislative action, but were not added to and made a part of the Bancroft Bonding Act. See section 10, chapter 449, Oregon Laws 1989.

223.299 Definitions for ORS 223.297 to 223.314. As used in ORS 223.297 to 223.314:

(1)(a) "Capital improvement" means facilities or assets used for the following:

(A) Water supply, treatment and distribution;

(B) Waste water collection, transmission, treatment and disposal;

(C) Drainage and flood control;

(D) Transportation; or

(E) Parks and recreation.

(b) "Capital improvement" does not include costs of the operation or routine maintenance of capital improvements.

(2) "Improvement fee" means a fee for costs associated with capital improvements to be constructed.

(3) "Reimbursement fee" means a fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists.

(4)(a) "System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the local government for its average cost of inspecting and installing connections with water and sewer facilities.

(b) "System development charge" does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision, expedited land division or limited land use decision. [1989 c.449 §2; 1991 c.817 §29; 1991 c.902 §26; 1995 c.595 §28; 2003 c.765 §2a; 2003 c.802 §18]

Note: See note under 223.297.

223.300 [Repealed by 1975 c.642 §26]

223.301 Certain system development charges and methodologies prohibited. (1) As used in this section, "employer" means any person who contracts to pay remuneration for, and secures the right to direct and control the services of, any person.

(2) A local government may not establish or impose a system development charge that requires an employer to pay a reimbursement fee or an improvement fee based on:

(a) The number of individuals hired by the employer after a specified date; or

(b) A methodology that assumes that costs are necessarily incurred for capital improvements when an employer hires an additional employee.

(3) A methodology set forth in an ordinance or resolution that establishes an improvement fee or a reimbursement fee shall not include or incorporate any method or system under which the payment of the fee or the amount of the fee is determined by the number of employees of an employer without regard to new construction, new development or new use of an existing structure by the employer. [1999 c.1098 §2; 2003 c.802 §19]

Note: See note under 223.297.

223.302 System development charges; use of revenues; review procedures. (1) Local governments are authorized to establish system development charges, but the revenues produced therefrom must be expended only in accordance with ORS 223.297 to 223.314. If a local government expends revenues from system development charges in violation of the limitations described in ORS 223.307, the local government shall replace the misspent amount with moneys derived from sources other than system development charges. Replacement moneys must be deposited in a fund designated for the system development charge revenues not later than one year following a determination that the funds were misspent.

(2) Local governments shall adopt administrative review procedures by which any citizen or other interested person may challenge an expenditure of system development charge revenues. Such procedures shall provide that such a challenge must be filed within two years of the expenditure of the system development charge revenues. The decision of the local government shall be judicially reviewed only as provided in ORS 34.010 to 34.100.

(3)(a) A local government must advise a person who makes a written objection to the calculation of a system development charge of the right to petition for review pursuant to ORS 34.010 to 34.100.

(b) If a local government has adopted an administrative review procedure for objections to the calculation of a system development charge, the local government shall provide adequate notice regarding the procedure for review to a person who makes a written objection to the calculation of a system development charge. [1989 c.449 §3; 1991 c.902 §27; 2001 c.662 §2; 2003 c.765 §3; 2003 c.802 §20]

Note: See note under 223.297.

223.304 Determination of amount of system development charges; methodology; credit allowed against charge; limitation of action contesting methodology for imposing charge; notification request. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution setting forth a methodology that is, when applicable, based on:

(A) Ratemaking principles employed to finance publicly owned capital improvements;

(B) Prior contributions by existing users;

(C) Gifts or grants from federal or state government or private persons;

(D) The value of unused capacity available to future system users or the cost of the existing facilities; and

(E) Other relevant factors identified by the local government imposing the fee.

(b) The methodology for establishing or modifying a reimbursement fee must:

(A) Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.

(B) Be available for public inspection.

(2) Improvement fees must:

(a) Be established or modified by ordinance or resolution setting forth a methodology that is available for public inspection and demonstrates consideration of:

(A) The projected cost of the capital improvements identified in the plan and list adopted pursuant to ORS 223.309 that are needed to increase the capacity of the systems to which the fee is related; and

(B) The need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users.

(b) Be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

(3) A local government may establish and impose a system development charge that is a combination of a reimbursement fee and an improvement fee, if the methodology demonstrates that the charge is not based on providing the same system capacity.

(4) The ordinance or resolution that establishes or modifies an improvement fee shall also provide for a credit against such fee for the construction of a qualified public improvement. A "qualified public improvement" means a capital improvement that is required as a condition of development approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

(a) Not located on or contiguous to property that is the subject of development approval; or

(b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(5)(a) The credit provided for in subsection (4) of this section is only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under subsection (4)(b) of this section may be granted only for the cost of that portion of such improvement that exceeds the local government's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under subsection (4)(b) of this section.

(b) A local government may deny the credit provided for in subsection (4) of this section if the local government demonstrates:

(A) That the application does not meet the requirements of subsection (4) of this section; or

(B) By reference to the list adopted pursuant to ORS 223.309, that the improvement for which credit is sought was not included in the plan and list adopted pursuant to ORS 223.309.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. This subsection does not prohibit a local government from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such improvement by other means, if a local government so chooses.

(d) Credits must be used in the time specified in the ordinance but not later than 10 years from the date the credit is given.

(6) Any local government that proposes to establish or modify a system development charge shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge.

(7)(a) Written notice must be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge, and the methodology supporting the system development charge must be available at least 60 days prior to the first hearing. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the local government. The local government

may periodically delete names from the list, but at least 30 days prior to removing a name from the list shall notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

(b) Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days following adoption or modification of the system development charge ordinance or resolution by the local government. A person shall request judicial review of the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100.

(8) A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change in amount is based on:

(a) A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to ORS 223.309; or

(b) The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:

(A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;

(B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order. [1989 c.449 §4; 1991 c.902 §28; 1993 c.804 §20; 2001 c.662 §3; 2003 c.765 §§4a,5a; 2003 c.802 §21]

Note: See note under 223.297.

223.305 [Repealed by 1971 c.325 §1]

223.307 Authorized expenditure of system development charges. (1) Reimbursement fees may be spent only on capital improvements associated with the systems for which the fees are assessed including expenditures relating to repayment of indebtedness.

(2) Improvement fees may be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

(3) System development charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements or for the expenses of the operation or maintenance of the facilities constructed with system development charge revenues.

(4) Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by a local government pursuant to ORS 223.309.

(5) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures. [1989 c.449 §5; 1991 c.902 §29; 2003 c.765 §6; 2003 c.802 §22]

Note: See note under 223.297.

223.309 Preparation of plan for capital improvements financed by system development charges; modification. (1) Prior to the establishment of a system development charge by ordinance or resolution, a local government shall prepare a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the local government intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.

(2) A local government that has prepared a plan and the list described in subsection (1) of this section may modify the plan and list at any time. If a system development charge will be increased by a proposed modification of the list to include a capacity increasing capital improvement, as described in ORS 223.307 (2):

(a) The local government shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under ORS 223.304 (6).

(b) The local government shall hold a public hearing if the local government receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption.

(c) Notwithstanding ORS 294.160, a public hearing is not required if the local government does not receive a written request for a hearing.

(d) The decision of a local government to increase the system development charge by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100. [1989 c.449 §6; 1991 c.902 §30; 2001 c.662 §4; 2003 c.765 §7a; 2003 c.802 §23]

Note: See note under 223.297.

223.310 [Amended by 1957 c.397 §3; repealed by 1971 c.325 §1]

223.311 Deposit of system development charge revenues; annual accounting. (1) System development charge revenues must be deposited in accounts designated for such moneys. The local government shall provide an annual accounting, to be completed by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year.

(2) The local government shall include in the annual accounting:

(a) A list of the amount spent on each project funded, in whole or in part, with system development charge revenues; and

(b) The amount of revenue collected by the local government from system development charges and attributed to the costs of complying with the provisions of ORS 223.297 to 223.314, as described in ORS 223.307. [1989 c.449 §7; 1991 c.902 §31; 2001 c.662 §5; 2003 c.765 §8a; 2003 c.802 §24]

Note: See note under 223.297.

223.312 [1957 c.95 §4; repealed by 1971 c.325 §1]

223.313 Applicability of ORS 223.297 to 223.314. (1) ORS 223.297 to 223.314 shall apply only to system development charges in effect on or after July 1, 1991.

(2) The provisions of ORS 223.297 to 223.314 shall not be applicable if they are construed to impair bond obligations for which system development charges have been pledged or to impair the ability of local governments to issue new bonds or other financing as provided by law for improvements allowed under ORS 223.297 to 223.314. [1989 c.449 §8; 1991 c.902 §32; 2003 c.802 §25]

Note: See note under 223.297.

223.314 Establishment or modification of system development charge not a land use decision. The establishment, modification or implementation of a system development charge, or a plan or list adopted pursuant to ORS 223.309, or any modification of a plan or list, is not a land use decision pursuant to ORS chapters 195 and 197. [1989 c.449 §9; 2001 c.662 §6; 2003 c.765 §9]

Note: See note under 223.297.

223.315 [Repealed by 1971 c.325 §1]

APPORTIONMENT OF GOVERNMENT ASSESSMENTS UPON PARTITION

223.317 Apportionment of special assessment among parcels in subsequent partition of tract. (1) Notwithstanding any other law, a local government may apportion a final assessment levied by it against 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, if the subsequent partition or division is in accordance with ORS 92.010 to 92.192 and is consistent with all applicable comprehensive plans as acknowledged by the Land Conservation and Development Commission under ORS 197.251. The proportionate distribution of a final assessment authorized under this subsection may be made whenever the final assessment remains wholly or partially unpaid, and full payment or an installment payment is not due.

(2) A local government shall apportion a final assessment under this section when requested to do so by any owner, mortgagee or lienholder of a parcel of real property that was formed from the partition or other division of the larger tract of real property against which the final assessment was originally levied. When the deed, mortgage or other instrument evidencing the applicant's ownership or other interest in the parcel has not been recorded by the county clerk of the county in which the parcel is situated, the local government shall not apportion the final assessment unless the applicant files a true copy of that deed, mortgage or instrument with the local government.

(3) Apportionment of a final assessment under this section shall be done in accordance with an order or resolution of the governing body of the local government. The order or resolution shall describe each parcel of real property affected by the apportionment, the amount of the final assessment levied against each parcel, the owner of each parcel and such additional information as is required to keep a permanent and complete record of the final assessments and the payments thereon. A copy of the order or resolution shall be filed with the recorder required to maintain the lien docket for the local government, who shall make any necessary changes or entries in the lien docket for the local government. [Formerly 308.140; 1991 c.902 §33; 2003 c.802 §26]

Note: 223.317 to 223.327 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 223 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

223.320 [Amended by 1957 c.397 §4; repealed by 1971 c.325 §1]

223.322 Proration of unpaid installments. When a final assessment is being paid in installments under the Bancroft Bonding Act or ORS 450.897, if the final assessment is apportioned among smaller parcels of real property under ORS 223.317 to 223.327, the installments remaining unpaid shall be prorated among those smaller parcels so that each parcel shall be charged with that percentage of the remaining installment payments equal to the percentage of the unpaid final assessment charged to the parcel upon apportionment. [Formerly 308.145; 1991 c.902 §34; 1995 c.333 §22; 1997 c.833 §21]

Note: See note under 223.317.

223.325 [Repealed by 1971 c.325 §1]

223.327 Procedure for equitable apportionment by ordinance or regulation. A local government that imposes final assessments shall adopt an ordinance or other regulations establishing procedures for the equitable apportionment of final assessments under ORS 223.317 to 223.327. The ordinance or regulations shall authorize the local government to establish fees reasonably calculated to reimburse it for its actual costs in apportioning final assessments under ORS 223.317 to 223.327. The provisions of ORS 223.317 to 223.327 relating to apportionment of final assessments shall apply to estimated assessments with respect to any tract or parcel divided into smaller parcels prior to the levy of the final assessment. [Formerly 308.150; 1991 c.902 §35; 2003 c.802 §27]

Note: See note under 223.317.

223.330 [Amended by 1969 c.531 §4; repealed by 1971 c.325 §1]

223.335 [Repealed by 1971 c.325 §1]

223.340 [Repealed by 1971 c.325 §1]

223.345 [Repealed by 1971 c.325 §1]

223.350 [Repealed by 1971 c.325 §1]

223.355 [Amended by 1969 c.531 §5; repealed by 1971 c.325 §1]

223.360 [Repealed by 1971 c.325 §1]

223.365 [Repealed by 1971 c.325 §1]

223.370 [Repealed by 1971 c.325 §1]

223.375 [Repealed by 1971 c.325 §1]

223.380 [Repealed by 1971 c.325 §1]

223.385 [Repealed by 1971 c.325 §1]

ASSESSMENTS FOR LOCAL IMPROVEMENTS

223.387 Description of real property; effect of error in name of owner. In levying, collecting and enforcing assessments for local improvement, the following shall apply:

(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 any other manner as to cause the description to be capable of being made certain. Initial letters, abbreviations, figures, fractions and exponents, to designate the township, range, section, or part of a section, or the number of any lot or block or part thereof, or any distance, course, bearing or direction, may be employed in any description of real property.

(2) If the owner of any land is unknown, the land may be assessed to "unknown owner," or "unknown owners." If the property is correctly described, no final assessment shall be invalidated by a mistake in the name of the owner of the real property assessed or by the omission of the name of the owner or the entry of a name other than that of the true owner. Where the name of the true owner, or the owner of record, of any parcel of real property is given, the final assessment shall not be held invalid on account of any error or irregularity in the description if the description would be sufficient in a deed of conveyance from the owner, or is such that, in a suit to enforce a contract to convey, employing such description a court of equity would hold it to be good and sufficient.

(3) Any description of real property which conforms substantially to the requirements of this section shall be a sufficient description in all proceedings of assessment relating or leading to a final assessment for a local improvement, foreclosure and sale of delinquent assessments, and in any other proceeding related to or connected with levying, collecting and enforcing final assessments for special benefits to the property. [1959 c.219 §1; 1965 c.282 §4; 1971 c.198 §1; 1991 c.902 §36]

223.389 Procedure in making local assessments for local improvements. (1) The governing body of a local government may prescribe by ordinance or resolution the procedure to be followed in making estimated assessments and final assessments for benefits from a local improvement upon the lots that have been benefited by all or part of the local improvement, to the extent that the charter of the local government does not prescribe the method of procedure. In addition, in any case where the charter of a local government specifies a method of procedure that does not comply or is not consistent with the requirements of the Oregon Constitution, the governing body of the local government may prescribe by ordinance or resolution the procedure that shall comply

and be consistent with the requirements of the Oregon Constitution, and the provisions of the ordinance or resolution shall apply in lieu of the charter provisions.

(2)(a) The ordinance or resolution prescribing the procedure shall provide for adoption or enactment of an ordinance or resolution designating the local improvement as to which an assessment is contemplated, describing the boundaries of the district to be assessed. Provision shall be made for at least 10 days' notice to owners of property within the proposed district in which the local improvement is contemplated. The notice may be made by posting, by newspaper publication or by mail, or by any combination of such methods. The notice shall specify the time and place where the governing body will hear and consider objections or remonstrances to the proposed local improvement by any parties aggrieved thereby.

(b) If the governing body determines that the local improvement shall be made, when the estimated cost thereof is ascertained on the basis of the contract award or the departmental cost of the local government, the governing body shall determine whether the property benefited shall bear all or a portion of the cost. The recorder or other person designated by the governing body shall prepare the estimated assessment to the respective lots within the assessment district and file it in the appropriate office of the local government. Notice of the estimated assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed. The notice shall state the amounts of the estimated assessment proposed on that property and shall fix a date by which time objections shall be filed with the recorder. Any objection shall state the grounds for the objection. The governing body shall consider the objections and grounds and may adopt, correct, modify or revise the estimated assessments.

(c) The governing body shall determine the amount of estimated assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing to the lot from the local improvement, and shall by ordinance or resolution spread the estimated assessments. [1959 c.219 §2; 1991 c.902 §37; 2003 c.802 §28]

223.391 Notice of proposed assessment to owner of affected lot. If a notice is required to be sent to the owner of a lot affected by a proposed assessment, the notice shall be addressed to the owner or the owner's agent. If the address of the owner or of the owner's agent is unknown to the recorder, the recorder shall mail the notice addressed to the owner or the owner's agent at the address where the property is located. Any mistake, error, omission or failure with respect to the 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 designated by the governing body and having general circulation within the boundaries of the local government where the property is located. [1959 c.219 §3; 1991 c.902 §38; 2003 c.802 §29]

223.393 Estimated and final assessments become liens. Estimated and final assessments shall become a lien upon the property assessed from and after the passage of the ordinance or resolution spreading the same and entry in appropriate lien record of the local government. The estimated assessment lien shall continue until the time the estimated assessment becomes a final assessment. The local government may enforce collection of such assessments as provided by ORS 223.505 to 223.650. [1959 c.219 §4; 1991 c.902 §39; 2003 c.802 §30]

223.395 Deficit assessments or refunds when initial assessment based on estimated cost. If the initial assessment has been made on the basis of estimated cost, and upon the completion of the work the cost is found to be greater than the estimated cost, the governing body may make a deficit assessment for the additional cost. Proposed assessments upon the respective lots within the assessment district for the proportionate share of the deficit shall be made; and notices shall be sent; opportunity for objections 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 initial assessment; and the deficit assessment spread by ordinance. If assessments have been made on the basis of estimated cost, and upon completion the cost is found to be less than the estimated cost, provision shall be made for refund of the excess or overplus. [1959 c.219 §5; 1991 c.902 §40]

223.396 [2009 c.753 §75; 2014 c.32 §1; renumbered 223.680 in 2015]

223.397 [1959 c.219 §§6,7; repealed by 1963 c.507 §1]

223.399 Powers of local government concerning assessments for local improvements. The governing body of a local government may impose additional procedural requirements. The procedural provisions of ORS 223.387 to 223.399 apply only where the charter or an ordinance of a local government does not specify otherwise and the charter or ordinance provisions comply and are consistent with the requirements of the Oregon Constitution. The charter or or-

dinance provisions shall apply to local improvements permitted by law. A local government may not authorize a local improvement prohibited by percentage of remonstrance or otherwise under the charter of the local government. [1959 c.219 §8; 1965 c.133 §1; 1991 c.902 §41; 2003 c.802 §31; 2017 c.17 §19]

223.401 Review of assessment. Notwithstanding any of the provisions of ORS 223.387 to 223.399, owners of any property against which an assessment for local improvements has been imposed may seek a review of the assessment under the provisions of ORS 34.010 to 34.100. [1965 c.133 §2; 2017 c.17 §20]

REASSESSMENT

223.405 Definitions for ORS 223.405 to 223.485. As used in ORS 223.405 to 223.485, unless the context requires otherwise, "objection" includes remonstrances. [Amended by 1965 c.282 §5; 1991 c.902 §42]

223.410 Authority of governing body to make reassessment. Whenever all or part of any estimated or final assessment for local improvements was or is declared void or set aside for any reason or its enforcement refused by any court by reason of jurisdictional or other defects in procedure, whether directly or by virtue of any court decision or when the governing body is in doubt as to the validity of all or part of any estimated or final assessment by reason of such defects in procedure, the governing body may by ordinance or resolution make a new estimated or final assessment or reassessment with respect to all or part of the original estimated or final assessment upon the lots which have been benefited by all or part of the local improvement to the extent of their respective and proportionate shares of the full value of such benefit. [Amended by 1991 c.902 §43]

223.415 Basis for, amount and method of reassessment. The reassessment shall be based upon the special and peculiar benefit of the local improvement to the respective lots at the time of the original making of the local improvement. The amount of the reassessment shall not be limited to the amount of the original estimated or final assessment. In the case of a reassessment of a final assessment:

(1) The property embraced in the reassessment shall be limited to property embraced in the original final assessment;

(2) Property on which the original final assessment was paid in full shall not be included in the reassessment; and

(3) Interest from the date of delinquency of the original final assessment may be added by the governing body to the reassessment in cases where the property was included in the original final assessment, but such interest shall not apply to any portion of the reassessment that exceeds the amount of the original final 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 local improvement was made, but the governing body 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 final assessment. [Amended by 1991 c.902 §44]

223.420 Effect of reassessment; exceptions. The reassessment when made shall become a charge upon the property upon which it is laid notwithstanding the omission, failure or neglect of any officer, body or person to comply with the provisions of the charter or law connected with or relating to the local improvement and original estimated or final assessment or any previous reassessment, and although the proceedings of the governing body or the acts of any officer, contractor or other person connected with the local 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 local improvement wherein a remonstrance sufficient in law to defeat it has been duly filed prior to the making of the local improvement. [Amended by 1991 c.902 §45]

223.425 Resolution to reassess. The proceedings required by the charter or other law for making of the original estimated or final assessment are not required with reference to the making of a reassessment. The reassessment shall be initiated by adoption of a resolution designating the improvement as to which a reassessment is contemplated, describing the boundaries of the district that the governing body 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. [Amended by 1991 c.902 §46]

223.430 Publication of notice of reassessment; contents. After the proposed reassessment is filed in the office of the recorder, the recorder shall give notice thereof by not less than four successive publications in a newspaper published in the city in which the principal offices of the local government are located and, if there is no newspaper published in the city, in a newspaper to be designated by the governing

body. The notice shall show that the proposed reassessment is on file in the office of the recorder, giving the date of the passage of the resolution authorizing it, the boundaries of the district or a statement of the property affected by the proposed reassessment, and specifying the time and place where the governing body will hear and consider objections to the proposed reassessment by any parties aggrieved thereby. [Amended by 1991 c.902 §47; 2003 c.802 §32]

223.435 Personal notice to each owner; right to file objections. The recorder shall, within five days after the date of first publication of the notice, mail or personally deliver to the owner of each lot affected by the proposed reassessment, or to the agent of such owner, a notice of the proposed reassessment, stating the matters set out in the printed notice and also the amount proposed to be charged against the lot. If the address of the owner or of the owner's agent is unknown to the recorder, the recorder shall mail the notice addressed to the owner or owner's agent at the address where such property is located. Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional or invalidate the reassessment proceedings. The owners of any property included in the description of the printed notice, or any person having an interest in that property, may, within 10 days from the day of last insertion of the printed notice, file in writing with the recorder objections against the proposed reassessment. [Amended by 1991 c.902 §48]

223.440 Hearing on objections; revision of reassessment. At the time and place appointed in the notice the governing body shall hear and determine all objections filed under ORS 223.435. The governing body may adjourn the hearing from time to time, and correct, modify or revise the proposed reassessment or set it aside and order the making of a new proposed reassessment. However, if the proposed reassessment is corrected or revised so as to increase the amount proposed to be charged against any property, such reassessment shall not be made until after a new notice has been given as stated in ORS 223.435 to the owners of property against which the amount of assessment is proposed to be thus increased. The publication of the notice may be for not less than two successive insertions in a newspaper as provided in ORS 223.430, and the time when action may be taken thereon may be not less than five days after the date of last insertion. If the proposed reassessment is set aside and a new apportionment ordered, notice shall be given of the new apportionment in the manner stated in ORS 223.430 and 223.435 and action taken thereon as provided in ORS 223.435 and 223.440. [Amended by 1991 c.902 §49]

223.445 Reassessment ordinance or resolution. When the governing body has determined what in its judgment is a fair, just and reasonable reassessment, it shall pass an ordinance or resolution 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 ORS 223.450 and 223.455. [Amended by 1991 c.902 §50]

223.450 Lien docket entry; crediting prior payments. When the reassessment is duly made it shall be entered in the lien docket of the local government. All provisions for bonding and paying by installments shall be applicable, and such liens of the local government shall be enforced and collected in the manner provided for collection of liens for an original local improvement. All sums paid upon the former final 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. [Amended by 1991 c.902 §51; 2003 c.802 §33]

223.455 Right of purchaser at sale under prior assessment. In cases where a sale was made under the original final assessment or any previous reassessment, with reference to such local improvement, and the property was not redeemed from the sale, the purchaser at the sale is subrogated to the rights of the local government with reference to the property upon such reassessment if the purchaser waives all penalties and interest, except such interest as may be provided for on the reassessment, and delivers up for cancellation any certificate or other evidence of the sale. If a deed was issued at the sale, the grantee therein, or the heirs, executors, administrators, successors or assigns of the grantee, shall execute a deed of release and quitclaim of all right, title and interest in the property under such sale to the owner of the property and deliver the deed to the recorder, so that the owner's title may be cleared of the sale. The recorder shall act as escrow holder of such certificate or other evidence of sale and of such deed pending completion of reassessment. If the reassessment is not completed, the recorder shall return the certificate or other evidence of sale and the deed to the person delivering it to the recorder. If the reassessment is completed, the certificate or other evidence of sale shall be canceled and placed on file in the office of the recorder and the deed shall be delivered to the owner of the property specified therein. If any such purchaser, or the heirs, executors, administrators, successors or assigns of such purchaser fails to comply with this section, that person is not

entitled to subrogation. In any event, the amount of subrogation shall not exceed the amount that has been paid to the local government on such sale, together with interest at the rate of six percent per annum from the date of sale until the date of payment. This amount is to be paid by the local government to the purchaser, or the heirs, executors, administrators, successors or assigns of the purchaser if and when the local government collects the amount of the reassessment against the property. [Amended by 1991 c.902 §52; 2003 c.802 §34]

223.460 [Repealed by 1965 c.71 §1]

223.462 Review of reassessment. Notwithstanding any of the provisions of ORS 223.405 to 223.485, owners of any property against which a reassessment for local improvements has been imposed may seek a review thereof under the provisions of ORS 34.010 to 34.100. [1965 c.71 §4]

223.465 [Repealed by 1965 c.71 §1]

223.470 [Repealed by 1965 c.71 §1]

223.475 [Repealed by 1965 c.71 §1]

223.480 [Repealed by 1965 c.71 §1]

223.485 When reassessment authority inapplicable; time limitation. (1) The authority granted in ORS 223.405 to 223.455 does not apply to any local government if the local government has provided a method of reassessment by ordinance or charter.

(2) No proceedings for making a reassessment shall be instituted after 20 years from the date when the first assessment was entered on the lien docket. [Amended by 1965 c.71 §3; 1991 c.902 §53; 2003 c.802 §35]

METHODS OF ENFORCING LIENS AND COLLECTING ASSESSMENTS

223.505 Definitions for ORS 223.505 to 223.595. As used in ORS 223.505 to 223.595:

(1) "Lawfully established unit of land" has the meaning given that term in ORS 92.010.

(2) "Tract" has the meaning given that term in ORS 215.010.

(3) "Treasurer" means the officer designated by charter or ordinance of the local government to collect unpaid liens or final assessments, take all steps necessary to enforce delinquent liens or assessments and to maintain records pertaining to collection proceedings thereon. [Amended by 1991 c.902 §54; 2003 c.802 §36; 2012 c.47 §1]

223.510 Authority to sell property for delinquent liens and assessments. In addition to the method provided by law, ordinance or the charter of any local government for the sale of real property for delinquent liens or final assessments, every local government may cause the real property to be sold as provided in ORS 223.510 to 223.590 for any final assessment, lien or installment thereof at any time after one year from the date such lien, final assessment or installment becomes due and payable, if bonded; otherwise, at any time after 60 days from the time it is entered in the lien docket of the local government. [Amended by 1991 c.902 §55; 2003 c.802 §37]

223.515 Preparation, transmission and contents of delinquent list. If any installment on any lien bonded, as provided by law, ordinances or charter of the local government, is delinquent for a period of one year from the time it became due and payable, or at any time after 60 days from the time it became due and payable if not bonded, the recorder may thereafter prepare and transmit to the treasurer a list in tabular form, made up from the lien docket, describing each lien, assessment or installment due on any bonded lien that is so delinquent. The list shall also contain the name of the person to whom assessed, a particular description of the property, the amount of the lien or final assessment or the amount of the installment due on any bonded lien, and any other facts necessary to be given. [Amended by 1991 c.902 §56; 2003 c.802 §38]

223.520 Procedure in collecting delinquencies. Upon receipt of the list described in ORS 223.515, the treasurer shall proceed to collect the unpaid liens or final assessments named in the list by advertising and selling the lawfully established units of land or tracts in the manner now provided by law for the sale of real property on execution, except as otherwise provided in ORS 223.525 to 223.580 and except that sale may be made at the place within the boundaries of the local government designated in the notice of sale. [Amended by 1991 c.902 §57; 2003 c.802 §39; 2012 c.47 §2]

223.523 Notice of sale; publication; personal notice to property owner and occupant. (1) Before a sale of real property under ORS 223.505 to 223.590 takes place, the treasurer shall have notice of the sale printed once a week for four successive weeks in a daily or weekly newspaper, as defined in ORS 193.010, generally circulated in the county in which the sale will be held. The notice of sale shall set forth the name and address of the treasurer conducting the sale, a particular description of the real property to be sold, including a street address, if any, the name of the owner of the property, the amount unpaid on the lien or final assessment and the date, time and place of sale, which shall be held in accordance with ORS 86.782.

(2) The treasurer shall send a copy of the first of the four published notices by regis-

tered or certified mail to both the owner of the real property to be sold at the last-known post-office address of the owner or place of residence and to the occupant, if any, of the real property to be sold. The treasurer shall also send a notice containing the same information required in a published notice under subsection (1) of this section by registered or certified mail at least 60 days prior to the sale to any person requesting notice under ORS 86.806 and to any person having a lien or other interest in the real property to be sold if the lien or interest appears of record. The treasurer shall retain and file the return receipt for the registered or certified mail. [1977 c.403 §2; 1985 c.231 §1; 1991 c.902 §58; 2009 c.510 §5]

223.525 Conduct of foreclosure sale. (1) Each lawfully established unit of land or tract must be sold separately and for a sum equal to or exceeding the greater of:

(a) The amount of the unpaid final assessment plus interest, penalties and the costs of conducting the sale; or

(b) Seventy-five percent of the total assessed value of the real property, as determined by the assessor of the county in which the land and improvements are located.

(2) If more than one bid equals or exceeds the minimum sum for which real property may be sold under this section, the real property must be sold to the highest bidder.

(3) If none of the bids equals or exceeds the minimum sum for which real property may be sold under this section or the sale is not completed for any other reason, the real property may be offered for sale as provided in ORS 223.560.

(4) If the sum received for the sale of real property under this section exceeds the amount of the unpaid final assessment, plus interest, penalties and the costs of conducting the sale, the treasurer shall apply the proceeds of the sale as follows:

(a) To the costs of conducting the sale.

(b) To the unpaid final assessment or installment secured by the lien and the interest and penalties.

(c) To persons with recorded liens or other interest in the real property in the order of their priority.

(d) To the debtor or the debtor's heirs or assigns.

(5) A levy is not required upon lawfully established units of land or tracts on the list described in ORS 223.515, but a notice of sale must be posted four consecutive weeks before the sale of each lawfully established unit of land or tract. [Amended by 1977 c.403 §3; 1991 c.902 §59; 2012 c.47 §3]

223.530 Title of purchaser. A sale of real property under ORS 223.505 to 223.590 conveys to the purchaser, subject to redemption as provided in ORS 223.565 to 223.590, all estates, interests, liens or claims therein or thereto of any persons, together with all rights and appurtenances thereunto belonging, excepting only the lien of a local government on such assessments or liens as are not included in the foreclosure proceedings. [Amended by 1991 c.902 §60; 2003 c.802 §40]

223.535 Record of sales; receipts for lien payments. The treasurer shall enter into columns provided for that purpose in the list transmitted to the treasurer by the recorder the date of the sale, the name of the purchaser and the amount paid for each parcel of property sold. The treasurer shall give a receipt to each person paying any lien or final assessment on the delinquent list prior to the sale thereof. The receipt must state separately the lien or final assessment, interest and costs collected, and a duplicate of the receipt shall be filed with the treasurer. [Amended by 1991 c.902 §61]

223.540 Payment of sale price. Real property when sold for or to satisfy a delinquent final assessment or lien, or both, must be sold for lawful money of the United States, except as provided in ORS 223.545. [Amended by 1991 c.902 §62]

223.545 Purchase by local government in absence of bids. If no bid is received for the sale of the property, the local government may purchase the property by bidding therefor the amount of the lien or liens and the cost of advertising and sale. The property may be struck off and sold to the local government without actual payment of money. [Amended by 1991 c.902 §63; 2003 c.802 §41]

223.550 Certificate of sale; contents. The treasurer shall immediately, after having sold any real property upon the list described in ORS 223.515, make and deliver to the purchaser a certificate of sale of the property so sold, setting forth therein the object for which the sale was made, a description of the property sold, a statement of the amount it sold for, the lien or final assessment for which the property was sold, the name of the purchaser and that the sale is made subject to redemption within one year from the date of the certificate, and then deliver such certificate to the purchaser. [Amended by 1991 c.902 §64]

223.555 Lien docket entries mandatory. The treasurer shall, within three days after sale, return to the recorder the delinquent list, with all collections and sales noted thereon. The recorder shall then make proper entries of collections and sales in the appropriate lien docket. Thereafter no transfer or assignment of any certificate of pur-

chase of real property sold under ORS 223.505 to 223.590 is valid unless an entry of such transfer or assignment has been noted by the recorder in said docket.

223.560 Unsold property reoffered; exceptions. If any property remains unsold at the sale, it may, in the discretion of the recorder, again be offered for sale in like manner, but not sooner than three months after the expiration of any sale, except that in the matter of an assessment for the opening, widening, laying out or establishing of a street, proceedings for such sale may be taken immediately.

223.565 Procedure and conditions of redemption. (1) The owner, or legal representatives of the owner, or the successor in interest of the owner, or any person having a lien by judgment or mortgage, or owner of a tax lien, on any property sold by virtue of ORS 223.520 may redeem it upon conditions provided in this section. Redemption of any real property sold for a delinquent final assessment or lien under the provisions of ORS 223.505 to 223.590 may be made by paying to the treasurer, at any time within one year from the date of the certificate of sale, the purchase price and 10 percent thereof as penalty, and interest on the purchase price at the rate of 10 percent per annum, from the date of the certificate. Where redemption is made by the holder of a tax lien the holder may have such redemption noted upon the record of the lien in like manner and with like effect as prescribed in this section. Such redemption shall discharge the property so sold from the effect of the sale and, if made by a lien creditor, the amount paid for the redemption shall thereafter be deemed a part of the judgment, mortgage or tax lien, as the case may be, and shall bear like interest, and may be enforced and collected as a part thereof.

(2) Anyone applying or seeking to redeem property sold under the provisions of ORS 223.505 to 223.590 must pay or offer to pay the sum necessary in lawful money of the United States.

(3) When an individual purchases real property at a foreclosure sale under ORS 223.505 to 223.590, if, with the approval of the local government, that purchaser incurs costs for maintaining or improving the property during the period allowed for redemption and if the property is subsequently redeemed, the treasurer may return all or part of the penalty paid by the person redeeming the property to the purchaser as provided by charter or ordinance of the local government. [Amended by 1977 c.403 §4; 1991 c.902 §65; 2003 c.576 §397; 2003 c.802 §42]

223.570 Execution and contents of deed to purchaser. After the expiration of one year from the date of the certificate of sale, if no redemption has been made, the treasurer shall execute to the purchaser, or the heirs or assigns of the purchaser, a deed of conveyance containing a description of the property sold, the date of the sale, a statement of the amount bid, of the lien or final assessment for which the property was sold, that the final assessment or lien was unpaid at the time of the sale and that no redemption has been made. The statement need contain no further recital of the proceedings prior to the sale. [Amended by 1991 c.902 §66]

223.575 Legal and evidentiary effect of deed. The effect of the deed shall be to convey to the grantee therein named the legal and equitable title in fee simple, to the real property described in the deed, excepting only the lien of a local government on such assessments or liens as were not included in the foreclosure proceedings. The deed shall be prima facie evidence of title in the grantee, except as stated in this section, and that all proceedings and acts necessary to make such deed in all respects good and valid have been had and done. Such prima facie evidence shall not be disputed, overcome or rebutted, or the effect thereof avoided, except by satisfactory proof of either:

(1) Fraud in making the final assessment or in the final assessment, or in the procuring of the lien.

(2) Payment of the final assessment or lien before sale or redemption after sale.

(3) That payment or redemption was prevented by fraud of the purchaser.

(4) That the property was sold for a lien or final assessment for which neither the property nor its owner, at the time of sale, was liable, and that no part of the final assessment or lien was assessed or levied upon the property sold. [Amended by 1991 c.902 §67; 2003 c.802 §43]

223.580 Grantee of deed entitled to possession. The grantee named in the deed described in ORS 223.570 shall upon delivery thereof be entitled to the immediate possession of the real property therein described.

223.585 Time limitation on actions to recover sold property. Every action, suit or proceeding which may be commenced for the recovery of land sold by the treasurer for any final assessment or lien or to quiet the title of the former owner, or the successors in interest of the former owner, against such sale, or to set aside such sale, or to remove the cloud thereof, except in cases where the final assessment or lien for which the land

has been sold was paid before the sale, or the land redeemed as provided by law, shall be commenced within one year from the time of recording the deed executed under ORS 223.570. [Amended by 1991 c.902 §68]

223.590 Tender of purchase price in action to recover property. In any action, suit or proceeding referred to in ORS 223.585, whether before or after the issuance of the deed, the party claiming to be the owner as against the party claiming under the sale must tender with the first pleading of the party and pay into the court at the time of filing such pleading the amount of the purchase price for which the lands were sold, together with the penalties prescribed by law at the time of the sale, and of all taxes and final assessments or liens, or both, levied or made upon or against the land, or any part thereof, which were paid after the sale by the purchaser at the sale, or the heirs or assigns of the purchaser, together with interest thereon at the rate of 10 percent per annum from the respective times of the payment of the purchase price, taxes, final assessments or liens, or both, by the purchaser, or the heirs or assigns of the purchaser, up to the time of the filing of the pleading, to be paid to the purchaser, or the heirs or assigns of the purchaser, in case the right or title of the purchaser at the sale fails in such action, suit or proceeding. [Amended by 1991 c.902 §69]

223.593 Alternate redemption procedure; cash payment required. (1) Notwithstanding ORS 223.565 and 223.650, when a local government sells real property under ORS 223.510 to 223.590 or pursuant to a judgment of foreclosure entered in an action authorized by ORS 223.610 for neglect or refusal by the owner to pay installments under ORS 223.265, the property may be redeemed as provided in this section by the owner, a legal representative or a successor in interest or by any other person having a lien on the property.

(2) Redemption of such real property may be made by paying to the treasurer of the local government, at any time within one year after the date of sale, the following amounts:

(a) The purchase price at the foreclosure sale and 10 percent thereof as penalty;

(b) The amount of any taxes, assessments or liens upon the property that are paid after the sale by the purchaser at the sale; and

(c) Interest on the amounts paid under paragraphs (a) and (b) of this subsection at a rate of 10 percent per annum from the respective times of the payments of the purchase price, taxes, assessments or liens to the date of redemption.

(3) A redemption of property under this section shall be made for cash. [Formerly 223.670; 2003 c.576 §398; 2003 c.802 §44]

223.594 Lien for water service to certain real property through single water meter; owner as water user; foreclosure. (1) When water service is provided to a multifamily building with five or more units with a single water meter, the owner of the real property shall be considered the user of the water. If payment for such water is not made when due and the water service has not been shut off or will not be shut off, the municipal utility may place a lien on the premises to which water service was provided for the amount due for such service.

(2) When requested by the property owner and authorized by the municipal utility, a single water meter may serve several parcels of real property owned by the same owner. The owner of those parcels of real property shall be considered the user of the water. If payment for such water is not made when due and the water has not been shut off or will not be shut off, the municipal utility providing such service may place a lien on the real property to which water service was provided for the amount due for such service.

(3) At any time after 60 days from the time the lien is entered in the lien docket of the local government, in addition to any method provided by law, ordinance or the charter of any local government, the lien may be foreclosed in the manner provided under ORS 223.510 to 223.595. [1993 c.786 §4; 2003 c.802 §45]

223.595 Validation of prior foreclosure proceedings. All foreclosure proceedings had or taken prior to May 28, 1927, by any municipal corporation which substantially comply with the provisions of ORS 223.505 to 223.590 hereby are declared to be legal and valid to the same extent as if they were had or taken under those sections.

223.605 Definition for ORS 223.605 to 223.650. As used in ORS 223.605 to 223.650, "liens" means liens, final assessments or installments of final assessments and includes any of those terms. [Amended by 1991 c.902 §70]

223.610 Foreclosure of certain liens by suits in equity. In addition to methods now provided by law, charters, ordinances or acts of incorporation for the foreclosure or collection of liens, any local government may foreclose any lien lawfully levied or assessed by it, by suit in equity in the circuit court of the county in which the local government is located. [Amended by 1991 c.902 §71; 2003 c.802 §46]

223.615 Recovery of attorney fees in foreclosure proceeding. In any action authorized by ORS 223.610, the court may award reasonable attorney fees to the local government bringing the action if the local government prevails in the action. The court may award reasonable attorney fees to a defendant who prevails in the action if the court determines that the local government had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [Amended by 1981 c.897 §43; 1991 c.902 §72; 1995 c.696 §19; 2003 c.802 §47]

223.620 Laws applicable to foreclosure proceedings. Suits authorized by ORS 223.610 shall be governed by ORS 88.010 to 88.100 and 93.760 and by all other laws relating to suits in equity insofar as applicable, except as otherwise provided in ORS 223.610 to 223.650. [Amended by 1987 c.586 §48a]

223.625 Liens which may be included in foreclosure suit. In any suit authorized by ORS 223.610, the local government may include any number of lots upon which it has delinquent liens though the liens may have been levied under the same or different ordinances or resolutions. Any number of different delinquent liens may be foreclosed upon the same lot in one suit. If there is more than one delinquent lien on any lot, the various amounts thereof, including accrued interest, penalties, costs and attorney fees, shall be added together and the total thereof shall be deemed the amount of the lien for which the lot is to be sold. [Amended by 1991 c.902 §73; 1993 c.18 §40; 2003 c.802 §48]

223.630 Joinder of parties in interest as defendants. In any suit authorized by ORS 223.610, the record owner and all persons and corporations claiming some right, title, lien or interest in and to any lot involved in the suit, and also all other parties or persons unknown claiming any right, title, estate, lien or interest in the real property described therein or any part thereof, may be joined as party defendants.

223.635 Complaint served on owner; issues tried separately. In addition to the service of summons, each record owner of a lot involved in the foreclosure suit shall be served with complaint in the manner provided by law. Any issue made by the pleadings in any foreclosure suit relating only to a certain lot or lots shall be tried separately and determined upon motion of any party in interest therein.

223.640 Allegations of jurisdictional facts. In any suit authorized by ORS 223.610, it shall be a sufficient allegation of jurisdictional facts authorizing the local government to make and levy any lien if the complaint alleges in general terms that the local improvement was made in the manner and as provided by law, by the local government's charter, ordinances, resolutions, or any of them, relating to such local improvement. It is not necessary to specifically set forth in the complaint any such charter provisions, ordinances or resolutions. [Amended by 1991 c.902 §74; 2003 c.802 §49]

223.645 Right of local government to bid at execution sale. The local government may bid at the sale on execution of the property involved in the foreclosure suit any amount not exceeding the sum found by the judgment of the court to be due upon the local government's lien, together with interest, costs, penalties and attorney fees, and it may credit the amount of its bid upon the execution. [Amended by 1991 c.902 §75; 1993 c.18 §41; 2003 c.576 §399; 2003 c.802 §50]

223.650 Redemption; no deficiency judgment. The time and manner for redemption of property from sales on execution in suits authorized by ORS 223.610 shall be the same as provided by law for the redemption of real property from sales on execution. The amount to be paid on redemption under this section shall be the amount for which the property was sold on execution, together with interest thereon at the rate of six percent per annum from the date of the sale until the date of redemption. However, no deficiency judgment shall be entered against the owner of the property.

223.670 [1985 c.656 §2; 1991 c.902 §76; renumbered 223.593 in 1991]

LOCAL GOVERNMENT PROGRAMS TO FINANCE CERTAIN IMPROVEMENTS

223.680 Local government programs to finance utilities improvements to real property. (1) As used in this section:

(a) "Local government" means cities and counties.

(b) "Qualifying real property" means multifamily residential dwellings or commercial or industrial buildings that the local government has determined can be benefited by utilities improvements.

(c) "Utilities improvements" means improvements to qualifying real property for any of the following purposes:

(A) Energy efficiency.

(B) Renewable energy.

(C) Energy storage.

(D) Smart electric vehicle charging stations.

(E) Water efficiency.

(2)(a) Subject to subsection (3) of this section, a local government may establish a program to assist owners of record of qualifying real property in financing cost-effective

utilities improvements to the qualifying real property.

(b) The utilities improvements must be authorized by:

(A) A local government implementing a program established under this section; or

(B) The State Department of Energy for a loan issued under subsection (10) of this section to a local government that establishes a program in cooperation with a local government described in subparagraph (A) of this paragraph.

(c) A program established pursuant to this subsection may provide for the local government to:

(A) Make loans to owners financed with the net proceeds and interest earnings of revenue bonds authorized by subsection (9) of this section;

(B) Facilitate private financing by the owners; or

(C) Make loans under subparagraph (A) of this paragraph and facilitate private financing under subparagraph (B) of this paragraph.

(3) Before establishing a program under this section, the local government shall provide notice to utilities that distribute electric energy, natural gas or water within the areas in which the local government will operate the program.

(4) A local government that establishes a program under this section may:

(a) Require performance of an energy or water audit on the qualifying real property before the local government approves a loan for utilities improvements to the property;

(b) Impose requirements intended to ensure that the costs of the improvements financed under this section do not exceed the cumulative cost savings of the improvements over the useful life of the improvements; and

(c) Impose requirements and conditions on loans or financing agreements that are designed to ensure timely repayment.

(5)(a) If the owner of record of qualifying real property requests financing pursuant to a program established under this section, subject to subsection (6) of this section, the local government implementing the program may:

(A) Enter into a loan agreement with the owner, and any other person benefited by the loan; or

(B) Facilitate a financing agreement for the owner, and any other person benefited by the financing.

(b) A loan agreement or financing agreement entered into pursuant to paragraph (a) of this subsection must be in a principal amount sufficient to pay:

(A) The costs of utilities improvements the local government determines will benefit the qualifying real property and the borrowers;

(B) The costs of the energy or water audit; and

(C) The costs and reserves of the program.

(c) A local government acting pursuant to paragraph (a) of this subsection may:

(A) If the local government makes a loan, charge the borrower an interest rate on the principal amount that is sufficient to pay the financing costs of the loan program, including loan delinquencies; and

(B) Charge periodic fees to pay for program costs.

(6) A local government may not enter into a loan agreement, or facilitate a financing agreement, under subsection (5) of this section unless the owner has:

(a) Provided written notice to all mortgagees of the qualifying real property that the owner intends to enter into a loan agreement or financing agreement under this section; and

(b) Received written consent from the mortgagees stating that the loan agreement or financing agreement entered into under this section does not constitute an event of default or give rise to any remedies under the terms of the mortgage loan agreements.

(7) The local government implementing a program established under this section may:

(a) Secure a loan or financing with a lien on the benefited qualifying real property with the same priority, as determined under ORS 223.230 (3), as a lien for assessments for local improvements arising under ORS 223.393.

(b) Assess the benefited qualifying real property for the amounts due under a loan agreement or financing agreement.

(c) Enforce a lien and collect an assessment authorized by this section as provided in ORS 223.505 to 223.650.

(d) Secure a loan or financing in any other manner that the local government determines is reasonable.

(8)(a) In lieu of enforcing liens and collecting assessments as provided in subsection (7)(c) of this section, a local government may certify the assessment, in the manner provided in ORS 310.060, to the county assessor of each county in which benefited qualifying real property is located.

(b) If the assessments are certified as provided in this subsection, the county assessor shall:

(A) Enter the assessment upon the county assessment roll against the property described in the certificate, in the manner that other local government assessments are entered;

(B) Collect, account for and enforce the assessments in the manner that local government property taxes are collected, accounted for and enforced; and

(C) Transfer, as provided by law, the assessments collected to the local government that imposed the assessment.

(9) A local government may issue revenue bonds pursuant to ORS 287A.150 to finance the costs of a program established under this section, including the costs of making loans for utilities improvements.

(10) The State Department of Energy may lend money under the provisions of ORS 470.060 to 470.080 and 470.090 to a local government that establishes a program under this section in cooperation with a local government implementing a program under this section. [Formerly 223.396; 2017 c.283 §1]

223.685 Local government programs to finance seismic rehabilitation of real property. (1) As used in this section:

(a) "Local government" means cities and counties.

(b) "Qualifying real property" means multifamily residential dwellings or commercial or industrial buildings that the local government has determined can be benefited by seismic rehabilitation.

(c) "Seismic rehabilitation" means improvements to qualifying real property that are:

(A) Intended to reduce or prevent harm to persons and property due to the effects of seismic activity on the qualifying real property; and

(B) Authorized by a local government implementing a program established under this section.

(2)(a) A local government may establish a program to assist owners of record of qualifying real property in financing cost-effective seismic rehabilitation of the qualifying real property.

(b) A program established pursuant to this subsection may provide for the local government to:

(A) Make loans to owners financed with the net proceeds and interest earnings of revenue bonds authorized by subsection (8) of this section;

(B) Facilitate private financing by the owners; or

(C) Make loans under subparagraph (A) of this paragraph and facilitate private financing under subparagraph (B) of this paragraph.

(3) A local government that establishes a program under this section may:

(a) Impose requirements intended to ensure that the loan or financing is consistent with the purposes of the program; and

(b) Impose requirements and conditions on loans or financing agreements that are designed to ensure timely repayment.

(4)(a) If the owner of record of qualifying real property requests financing pursuant to a program established under this section, subject to subsection (5) of this section, the local government implementing the program may:

(A) Enter into a loan agreement with the owner and any other person benefited by the loan; or

(B) Facilitate a financing agreement for the owner and any other person benefited by the financing agreement.

(b) A local government acting pursuant to paragraph (a) of this subsection may:

(A) If the local government makes a loan, charge the borrower an interest rate on the principal amount that is sufficient to pay the financing costs of the loan program, including loan delinquencies; and

(B) Charge periodic fees to pay for program costs.

(5) A local government may not enter into a loan agreement, or facilitate a financing agreement, under subsection (4) of this section unless the owner has:

(a) Provided written notice to all mortgagees of the qualifying real property that the owner intends to enter into a loan agreement or financing agreement under this section; and

(b) Received written consent from the mortgagees stating that the loan agreement or financing agreement entered into under this section does not constitute an event of default or give rise to any remedies under the terms of the mortgage loan agreements.

(6) The local government implementing a program established under this section may:

(a) Secure a loan or financing with a lien on the benefited qualifying real property with the same priority, as determined under ORS 223.230 (3), as a lien for assessments for local improvements arising under ORS 223.393.

(b) Assess the benefited qualifying real property for the amounts due under a loan agreement or financing agreement.

(c) Enforce a lien and collect an assessment authorized under this section as provided in ORS 223.505 to 223.650.

(d) Secure a loan or financing in any other manner that the local government determines is reasonable.

(7)(a) In lieu of enforcing liens and collecting assessments as provided in subsection (6)(c) of this section, a local government may certify the assessment, in the manner provided in ORS 310.060, to the county assessor of each county in which benefited qualifying real property is located.

(b) If the assessments are certified as provided in this subsection, the county assessor shall:

(A) Enter the assessment upon the county assessment roll against the property described in the certificate, in the manner that other local government assessments are entered;

(B) Collect, account for and enforce the assessments in the manner that local government property taxes are collected, accounted for and enforced; and

(C) Transfer, as provided by law, the assessments collected to the local government that imposed the assessment.

(8) A local government may issue revenue bonds pursuant to ORS 287A.150 to finance the costs of a program established under this section, including the costs of making loans for seismic rehabilitation. [2015 c.48 §1; 2017 c.283 §2]

Note: 223.685 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 223 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FINANCING OF LOCAL IMPROVEMENTS; REBONDING; REINSTATEMENT; TYPE OF BONDS ACCEPTED IN PAYMENT OF LIENS; ASSESSMENT OF PUBLIC PROPERTY

223.705 Rebonding of unpaid assessments. Subject to the prior approval of the governing body of the local government, the owner of any property assessed for local improvements under state law or under the charter of any local government, and in cases where a final assessment for local improvement has been bonded and entered in the bond lien docket as authorized by ORS 223.205 and 223.210 to 223.295 or the charter and the bonded assessment has not been fully paid, may file with the auditor, clerk or other officer charged with the keeping of records of the local government an application for rebonding the original assessment in the amount due and unpaid thereon. The auditor, clerk or other officer charged with keeping the records of the local government may accept these applications. If there is more than one final assessment on the same piece of property, the owner may combine them in one application. [Amended by 1991 c.902 §77; 2003 c.802 §51]

223.710 Rebonding application; form; prerequisites. (1) The applications for rebonding shall be in the same form and preserved as original bonding applications. The officer charged with keeping the records of the local government shall keep the bonding applications in convenient form for examination. The officer shall enter in a docket kept for that purpose a description of each lot or parcel of land against which the rebonding assessment is made, or which bears or is chargeable for the cost of the local improvement, with the name of the then owner and the total amount of unpaid final assessments rebonded.

(2) The total amount to be rebonded against any lot or parcel of land must be $25 or more. The owner shall tender and pay with the application all accrued interest due on the bonded assessment to the first of the month preceding the date of application.

(3) No application for rebonding shall be received unless the taxes for any quarter of the current year then due and payable, together with the entire amount of taxes of the year immediately preceding the year in which the application is filed, have been fully paid and evidence of such payment satisfactory to the officer receiving the application is produced at the time of making the application. [Amended by 1991 c.902 §78; 2003 c.802 §52]

223.715 Payment of rebonded assessment. The amount of the assessment to be rebonded shall constitute a new principal and shall be paid in such number of equal periodic installments as the governing body of the local government may determine, with interest thereon at the rate per annum determined by the governing body of the local government under ORS 223.215. [Amended by 1969 c.531 §6; 1981 c.322 §5; 1991 c.902 §79; 2003 c.802 §53]

223.720 Amount of lien; priority. The amount of the unpaid rebonded assessments entered in the rebonding assessment docket, with interest on unpaid rebonded assessments at the rate per annum determined by the governing body of the local government under ORS 223.215, against each such lot or parcel of land, shall stand as a lien in favor of the local government until the rebonded assessments and interest are paid. A rebonding assessment lien shall have the same priority as all other liens relating to assessments for local improvements. [Amended

by 1969 c.531 §7; 1981 c.322 §6; 1991 c.902 §80; 2003 c.802 §54]

223.725 Issuance and sale of bonds. Each local government may, by ordinance or resolution of its governing body from time to time, issue and sell pursuant to rebonding applications, bonds of the tenor of those designated in ORS 223.235, in an amount not exceeding the total amount of such applications. [Amended by 1991 c.902 §81; 2003 c.802 §55]

223.730 Application of proceeds from sale of bonds. The proceeds from the sale of bonds issued under ORS 223.725 shall be applied as follows:

(1) The amount provided under ORS 223.705 to be rebonded shall be placed to the credit of the improvement bond sinking fund. Thereafter, as soon as practicable and in so far as possible, there shall be called and paid an equivalent amount of the bonds originally issued and so refunded by new applications to pay in installments.

(2) The balance of the proceeds of the sale shall be placed to the credit of the improvement bond interest fund.

223.735 Debt limitation of local government not applicable. The bonds and the amount thereof authorized pursuant to ORS 223.705 shall not be counted in calculating the limited indebtedness of any local government, fixed either by its charter, ORS 223.295, by any law, or by the Constitution of this state, but shall be in excess thereof and excluded from such debt limitations. [Amended by 1991 c.902 §82; 2003 c.802 §56]

223.740 General provisions applicable. Except as otherwise provided in ORS 223.705 to 223.750, the provisions of ORS 223.205 and 223.210 to 223.295 or any charter shall apply to the rebonding application, to the form, to the manner of paying the amount entered in the bond lien docket, to the collection of delinquent installments and to issuance, sale and redemption of improvement bonds issued pursuant to ORS 223.725.

223.745 Scope of power granted. The power granted by ORS 223.705 to 223.750 is vested in each local government and is self-operating therein without further necessity of enacting charter or ordinance provisions incorporating the terms of those sections. [Amended by 1991 c.902 §83; 2003 c.802 §57]

223.750 Enactment of rulemaking ordinances; effect of irregularities. (1) Each local government, through its governing body, may provide, by such ordinances, rules and regulations as may be needed, for accepting rebonding applications, issuing bonds and otherwise carrying out the terms of ORS 223.705 to 223.750; and may, by such ordinance and in conformity with ORS 223.715, determine the interest rate to be charged property owners who apply to rebond liens as provided by those sections.

(2) No error or omission in rebonding liens shall invalidate or impair the original bonded lien. [Amended by 1991 c.902 §84; 2003 c.802 §58]

223.755 Reinstatement of delinquent bonded assessments authorized. (1) As used in this section, "bonded assessment" means any assessment for a local improvement levied by any local government where application to pay such assessment in installments has been filed with the local government levying it.

(2) After approval by the governing body of any local government, the owner of any property, against which there is outstanding any delinquent bonded assessment, at any time before the property affected by the assessment has been sold for the collection thereof as provided by law, may pay any delinquent installment of the bonded assessment, together with the amount of interest due thereon as provided by the law governing the same, plus the cost of advertising the property for sale and a penalty of three percent on the amount of the delinquent installment so paid.

(3) The power granted by subsection (2) of this section is vested in each local government and is self-operating therein without the necessity of amending the charter thereof incorporating the terms of this section.

(4) The governing body of each local government may, in its discretion, by ordinance, make the provisions of this section applicable to delinquent bonded assessments levied by it and outstanding against property in the local government. [Amended by 1991 c.902 §85; 2003 c.802 §59]

223.760 H.O.L.C. bonds accepted in payment of assessment liens. The governing body of any incorporated city may by ordinance provide that any or all special assessments levied against any tract or part thereof within the city and due the city, may be paid by bonds issued by the Home Owners' Loan Corporation, created by Act of Congress as of June 13, 1933. The governing body shall in the ordinance prescribe the terms and conditions under which those bonds shall be accepted in payment of such assessments.

223.765 Bonds accepted as payment for assessment liens. Any local government may, by ordinance duly passed by its governing body, authorize the acceptance by such local government of the general obligation bonds or interest coupons attached, or both, of the local government, in payment of all or any part of special assessment liens, interest

or penalties of or payable to the local government. [Amended by 1991 c.902 §86; 2003 c.802 §60]

223.770 Assessment of public property benefited by improvements. (1) Whenever all or any part of the cost of public improvements made by any local government is to be assessed to the property benefited thereby, benefited property owned by the local government or any other public body as defined in ORS 174.109 shall be assessed the same as private property and the amount of the assessment shall be paid by the public body, provided that the costs of the improvements are, in any given case, of the type that may be bonded under ORS 223.205 and 223.210 to 223.215.

(2) In the case of property owned by the state, the amount of the assessment shall be certified by the treasurer and filed with the Oregon Department of Administrative Services as a claim for reference to the Legislative Assembly in the manner provided by ORS 293.316, unless funds for the payment of the assessment have been otherwise provided by law. [Amended by 1967 c.454 §93; 1991 c.902 §87; 2003 c.802 §61]

223.775 Assessment of property of cemetery authority benefited by certain improvements. (1) As used in subsections (2) to (5) of this section:

(a) "Cemetery authority" means a nonprofit cemetery or crematory corporation.

(b) "Sale" includes a contract of sale as well as a sale.

(2) Notwithstanding the provisions of ORS 97.660 to 97.680 or any other provision of law, whenever all or any part of the cost of a street, curb or sidewalk improvement made by a local government is to be assessed to the property benefited thereby, benefited property owned and platted for cemetery or crematory purposes by a cemetery authority shall be assessed the same as private property. The amount of the assessment shall be paid by the cemetery authority as provided in this section.

(3)(a) Within 60 days after the date the ordinance levying the initial assessment is enacted by the local government, the cemetery authority shall furnish the local government with a list of platted burial lots within the benefited property unsold on the date such ordinance was enacted. Until such assessment is paid in full, whenever additional burial lots are platted within the benefited property, the cemetery authority shall furnish the local government with a list of such additional lots at the time the plat thereof is recorded.

(b) Out of the first funds received for the sales price of any of such lots, the cemetery authority after setting aside perpetual care and maintenance funds as required by law or otherwise shall credit five percent of such sales price to a special account for the payment of the assessment until a sum equal to the assessment and any interest due thereon has been so credited.

(4) All funds accumulated in the special account for the payment of assessments shall be paid semiannually to the local government levying such assessment, the first payment to be made six months after the date the final assessment was levied and succeeding payments each six months thereafter until such assessment and any interest due thereon, as provided in this subsection, is paid in full. Any funds in such account that are not paid to the local government when due shall bear interest at the rate of seven percent per annum from the due date until paid to the local government.

(5) Platted property of a cemetery authority subject to an assessment as provided in this section is exempt from execution for collection of any such assessment while such property is held by a cemetery authority for cemetery or crematory purposes. Any such assessment levied against a cemetery authority shall be payable only from the funds received for the sale of lots listed with the local government as required by subsection (3) of this section. Except as provided in subsection (4) of this section, interest shall not be due on the unpaid balance of any such assessment. [1963 c.521 §§1,2; 1969 c.531 §8; 1991 c.902 §88; 2003 c.802 §62]

223.785 [1969 c.505 §1; 1983 c.349 §7; 1983 c.713 §1; repealed by 1991 c.902 §121]

SPECIAL CITY IMPROVEMENTS; PARKING FACILITIES; STREETS; SIDEWALKS; AIDS TO WATER COMMERCE

223.805 Short title of ORS 223.805 to 223.845. ORS 223.805 to 223.845 shall be known as the Motor Vehicle Parking Facilities Act.

223.810 Establishment of motor vehicle parking facilities. Any incorporated city may establish one or more off-street motor vehicle parking facilities for the general use and benefit of the people of the city, or for one or more special classes of vehicles, as appears necessary, proper or beneficial in the public interest. For these purposes, the city may proceed as provided in ORS 223.815 to 223.845.

223.815 Acquisition of property for parking facilities. For the purposes of ORS 223.810, a city may acquire property at or below the surface of the earth, by purchase, condemnation, exchange or other lawful manner. However, a city may not so acquire privately owned property used for public

parking unless the facility to be constructed by the city would substantially increase the number of vehicle off-street parking spaces available for public use. The city may use the area below the street surface or the area beneath the surface of a park or other public property. [Amended by 1959 c.653 §8; 1967 c.478 §1]

223.820 Planning, constructing and contracting for the operation of or leasing parking facilities. For the purposes of ORS 223.810, a city may:

(1) Plan, design and locate the parking facilities.

(2) Construct, alter, enlarge, repair and maintain buildings, structures, equipment, access and entrance facilities, exit facilities, fencing and other accessories necessary or desirable for the safety or convenience of motorists using the off-street parking facilities.

(3) Contract with any person, firm or corporation for construction or for operation of the parking facility upon such terms as are found to be in the public interest, after first advertising for bids therefor by publication not less than once a week for two consecutive weeks in a newspaper of general circulation in the city, making two publications in all.

(4) Lease for a period not exceeding 50 years, notwithstanding any conflicting provision of any law, city charter or ordinance, any property referred to in ORS 223.810 to any person, firm or corporation pursuant to an agreement, according to such terms as are found to be in the public interest, whereby such person, firm or corporation undertakes to construct, where necessary, or alter or repair, and maintain and operate on such property the buildings, structures, equipment, facilities and accessories necessary or convenient for parking facilities, and title to such building or structure to be constructed or altered shall vest in the city either when constructed or altered or at the termination of said lease. Such agreement shall be made only after first advertising for bids therefor by publication not less than once a week for two consecutive weeks in a newspaper of general circulation in the city, making two publications in all. [Amended by 1953 c.668 §2]

223.825 Financing of parking facilities. For the purposes of ORS 223.810, a city may finance the parking facilities by any one or any combination of the following methods:

(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 legislative authority of the city.

(2) Special or benefit assessments equal to the actual costs of the parking facilities, or a portion thereof, such assessment to be levied against property benefited in proportion to the benefit derived, the amount of such assessment to be determined in accordance with special assessment practices for local improvements as now or hereafter prescribed by the ordinances or charter provisions of the city.

(3) Parking fees, special charges or other revenue derived from the use of off-street parking facilities by motorists, lessees, concessionaires, commercial enterprises or others.

(4) General fund appropriations.

(5) State or federal grants or local aids.

(6) Parking meter revenues.

(7) General property taxes, or gift, bequest, devise, grant or otherwise.

(8) For any city under 300,000 according to the latest federal decennial census, 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, profession or trade. In levying the fee, the governing body shall take into consideration the unmet off-street parking requirements of such business. The proceeds of the fee, less refunds and costs 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. [Amended by 1959 c.653 §9; 1967 c.380 §1; 1969 c.380 §1; 1991 c.902 §89]

223.830 Service concessions in parking facilities. For the purposes of ORS 223.810, a city may rent or lease to any individual, firm or corporation any portion of the premises established as an off-street parking facility for service concessions, commercial uses or otherwise, after first advertising for bids therefor by publication not less than once a week for two consecutive weeks in a newspaper of general circulation in the city, making two publications in all. [Amended by 1967 c.380 §2]

223.835 Fees and regulations of parking facilities. For the purposes of ORS 223.810, a city may:

(1) Charge such fees as the legislative authority of the city finds fair and reasonable for the privilege of using the off-street parking facilities. These fees need not be limited to the cost of operation and administration but may be for revenue.

(2) Regulate and restrict the use of the parking facilities or prohibit the use thereof for vehicles of more than a class or classes

of vehicles and provide penalties for violation of such regulations or prohibitions.

223.840 Disposing of property acquired for parking facilities. For the purposes of ORS 223.810, a city may sell, encumber, lease, exchange or otherwise dispose of property and property rights acquired as may be found in the public interest.

223.845 Limitation on operation of parking facilities; use of revenues after issuance of revenue bonds; excess revenues. (1) If a city establishes an off-street motor vehicle parking facility under ORS 223.810, the city may operate the off-street motor vehicle parking facility or lease the facility under ORS 223.820. The city may not operate service concessions in an off-street motor vehicle parking facility. If a city issues revenue bonds under ORS 223.825 to finance the acquisition and construction of an off-street motor vehicle parking facility, the city shall provide, for as long as those revenue bonds are outstanding, that the revenues derived from the operation of the off-street motor vehicle parking facility be disbursed by the city for some or all of the following purposes:

(a) Payment of interest on and retirement of principal of bonds issued by the city for financing the acquisition or construction of the off-street motor vehicle parking facility or other parking facilities of the city.

(b) Payment of the necessary costs and expenses of operating the off-street motor vehicle parking facility and other parking facilities of the city.

(c) Creation and maintenance of a reserve account to make necessary replacements to the off-street motor vehicle parking facility and other parking facilities of the city.

(d) Payment to the taxing bodies in lieu of taxes an amount equal to the ad valorem taxes that would be derived from the off-street motor vehicle parking facility if under private ownership.

(e) Reimbursement of owners of real property for special assessments paid by them and levied against real property to finance the off-street motor vehicle parking facility.

(f) Payment to the city of a fair return on its investment in parking facilities for the purpose of making additional parking and traffic improvements.

(2) If an off-street motor vehicle parking facility generates more revenue than required for the purposes described in subsection (1) of this section, the governing body of the city shall reduce the rates charged for the use of the off-street motor vehicle parking facility. [Amended by 1959 c.653 §10; 1999 c.559 §3]

223.849 [1957 c.430 §1; repealed by 1959 c.653 §12]

223.850 [Renumbered 223.880]

223.851 Special assessment for street lighting, street maintenance and street cleaning; approval by electors. When authorized at any properly called election, the governing body of a city may assess, levy and collect annual assessments upon any real property within its boundaries for street lighting, street maintenance and street cleaning services which benefit the property. [1983 c.234 §2]

223.852 [1957 c.430 §2; repealed by 1959 c.653 §12]

223.854 [1957 c.430 §3; repealed by 1959 c.653 §12]

223.855 [Renumbered 223.882]

223.856 Measure imposing assessments; contents. (1) A measure authorizing assessments under ORS 223.851 to 223.876 shall specify the services proposed to be financed by the assessments, the maximum amount that may be imposed and the number of years in which assessments will be made.

(2) Each assessment measure shall provide for the operation and maintenance of a single street lighting, street maintenance or street cleaning service. More than one measure may be submitted to the electors at a single election. Assessments for street lighting may include an amount sufficient to pay construction, reconstruction, modification and installation costs as well as operating and maintenance costs.

(3) The measure shall provide that assessments are in lieu of any existing local option tax for the service to be provided. [1983 c.234 §3; 1999 c.21 §4]

223.857 [1957 c.430 §4; repealed by 1959 c.653 §12]

223.859 [1957 c.430 §5; repealed by 1959 c.653 §12]

223.860 [Renumbered 223.884]

223.861 Basis of assessment. Assessments shall be based upon any reasonable basis of assessment related to services received by the assessed property for the period specified in the measure. [1983 c.234 §4]

223.862 [1957 c.430 §6; repealed by 1959 c.653 §12]

223.864 [1957 c.430 §7; repealed by 1959 c.653 §12]

223.865 [Renumbered 223.886]

223.866 Levy of assessment; manner of collection; effect of nonpayment. (1) The city each year shall estimate assessments needed and the amount of assessment for each tax account, and the amount thereof may be levied and returned to the officer whose duty it is to extend the ad valorem tax roll at the time required by law for taxes to be levied and returned.

(2) All assessments levied by the city shall become payable at the same time, may be collected by the same officer who collects

ad valorem taxes and shall be turned over to the city according to law.

(3) The officer whose duty it is to extend the city levy may extend the levy of the city in the same manner as city taxes are extended.

(4) Property shall be subject to sale for the nonpayment of assessments levied by the city in like manner and with like effect as in the case of city taxes. [1983 c.234 §5]

223.867 [1957 c.430 §8; repealed by 1959 c.653 §12]

223.869 [1957 c.430 §9; repealed by 1959 c.653 §12]

223.870 [Renumbered 223.888]

223.871 [1983 c.234 §6; repealed by 1991 c.902 §121]

223.872 [1957 c.430 §10; repealed by 1959 c.653 §12]

223.874 [1957 c.430 §11; repealed by 1959 c.653 §12]

223.875 [Renumbered 223.900]

223.876 Charter authority not affected. ORS 223.851 to 223.876 are in addition to and not a limitation on authority a city may exercise under its charter. [1983 c.234 §7]

223.877 [1957 c.430 §12; repealed by 1959 c.653 §12]

223.878 Inclusion of property outside city in city assessment for local street improvement. (1) The governing body of a city may include property located outside the city as part of the property to be improved or to be assessed for a street improvement, subject to the following conditions:

(a) The type of street improvement is one which the city has authority to finance by assessments against property within the city.

(b) The governing body of the county, by resolution, approves the improvement if any portion of it is outside the city.

(c) The governing body of the county, by resolution, approves the assessment of the property outside the city.

(d) The assessment authority, including authority to enforce collection of assessments, is exercised for property outside the city in the same manner as for property within the city.

(2) The owners of property outside the city subject to assessment under this section shall have the same rights, including remedies, which the owners of property within the city may have. [Formerly 308.170]

Note: 223.878 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 223 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

223.879 [1957 c.430 §13; repealed by 1959 c.653 §12]

223.880 Public roads included in sidewalk improvement district; assessment on property benefited. Any incorporated city, in addition to powers granted by law or charter, may include in any sidewalk improvement district within the city all county roads or state highways or any part thereof which are located within the improvement district. It may cause to be built on the county roads or state highways or portions thereof within the improvement district, sidewalks for pedestrian travel, and may assess the cost thereof upon the property benefited thereby, in the manner provided by charter or law. [Formerly 223.850]

223.882 Acquisition of property by city to aid water commerce. In order to secure benefit from the United States Bonneville electrical and navigation project, all cities may purchase, acquire by condemnation, or lease, real property for the purpose of constructing thereon wharves, docks or other similar structures, or other aid to water-borne commerce, or for providing for sites for the location and operation of industrial or manufacturing plants or works thereon which will use the electrical energy developed by the Bonneville project and which would constitute feeders for docks, wharves or other aids of water-borne commerce. [Formerly 223.855]

223.884 Eminent domain authority within and without city limits. In carrying out the powers granted by ORS 223.882, cities are granted the right of eminent domain and the right to take private property for the public uses authorized by ORS 223.882. This power shall be exercised as provided by ORS chapter 35. Real property located without the corporate limits of the city, adjacent or contiguous to any of the boundary lines of the corporate limits of the city or within 10 miles of the boundary line of the corporate limits of any such city, may be acquired under the terms of this section. The determination of the council, commission of public docks, or other administrative body of the city having jurisdiction of its wharf or dock property that the acquiring of any particular real property is necessary to carry out the purposes of ORS 223.882 shall be sufficient foundation for the exercise of the right of eminent domain, notwithstanding that there is other real property available that might be used for those purposes. [Formerly 223.860; 1971 c.741 §22]

223.886 Loans authorized to finance improvements; security for loans; consent of electors. In carrying out the powers conferred by ORS 223.882, the city may borrow money from any person, corporation or agency of the United States Government for the purchase of any real property described in ORS 223.882, or for paying the cost of improvements on any real property, which improvements may include the construction of docks, wharves or other structures and appurtenant appliances or fixtures or machinery necessarily required to operate a wharf or dock. In borrowing money for any of these purposes the cities may secure money so

borrowed by executing and giving a mortgage or similar indenture on any such real property and its revenues. If repayment of money borrowed for acquisition or improvement of any such real property is not to be secured solely by the real property and the income derived therefrom, then, before a debt for the purpose of this section or ORS 223.882 can be contracted or incurred, the consent of the electors of the city must first be obtained. [Formerly 223.865]

223.888 Authority of city to carry out law. In the execution of powers conferred by ORS 223.882 to 223.886, a city may act through its council, commission of public docks, or other administrative body having jurisdiction of its wharves, docks or waterfront property. The city or its said administrative body may enter into and execute contracts or leases and do all acts and things requisite for carrying out the purposes of ORS 223.882 to 223.900. [Formerly 223.870]

223.900 Leasing property to individuals. In leasing or renting any part or portion of the real property acquired pursuant to the authority of ORS 223.882 to any individual or corporation, a city shall act in conformity with the requirements of ORS 271.300 to 271.360 when those sections are applicable. [Formerly 223.875; 1985 c.443 §2]

223.905 [Repealed by 2007 c.783 §234]

223.910 [Repealed by 2007 c.783 §234]

223.915 [Repealed by 2007 c.783 §234]

223.920 [Repealed by 2007 c.783 §234]

223.925 [Repealed by 2007 c.783 §234]

MISCELLANEOUS PROVISIONS

223.930 Streets along city boundaries or partly within and without city. (1) Any city may construct, improve, maintain and repair any street the roadway of which, as defined in the Oregon Vehicle Code, is along or along and partly without, or partly within and partly without the boundaries of the city and may acquire, within and without the boundaries of such city, such rights of way as may be required for such street by donation or purchase or by condemnation in the same manner as provided in ORS 223.005 to 223.105, except as provided in subsection (2) of this section.

(2) In any condemnation proceeding pursuant to subsection (1) of this section, a city shall not have any right of occupancy or possession until the condemnation judgment is paid. [1955 c.551 §1; 1985 c.16 §453]

223.935 Basis for legalization of road. A city governing body may initiate proceedings to legalize a city road within the city under ORS 223.935 to 223.950 if any of the following conditions exist:

(1) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road.

(2) If the location of the road cannot be accurately determined due to:

(a) Numerous alterations of the road;

(b) A defective survey of the road or adjacent property; or

(c) Loss or destruction of the original survey of the road.

(3) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the city records. [1989 c.375 §1]

223.940 Proceedings for legalization of roads; report; notice. (1) If proceedings for legalization of a road are initiated under ORS 223.935, the city governing body shall:

(a) Cause the road to be surveyed to determine the location of the road;

(b) Cause the city engineer or other city road official to file a written report with the city governing body including the survey required under this section and any other information required by the city governing body; and

(c) Cause notice of the proceedings for legalization to be provided to owners of abutting land in the manner required by city ordinance or charter.

(2) In a proceeding under this section, any person may file with the city governing body information that controverts any matter presented to the city governing body in the proceeding or alleging any new matter relevant to the proceeding. [1989 c.375 §2]

223.945 Compensation for property affected by road legalization. (1) A city governing body shall provide for compensation under this section to any person who has established a structure on real property if the structure encroaches on a road that is the subject of legalization proceedings under ORS 223.935 to 223.950.

(2) To qualify for compensation under this section, a person must file a claim for damages with the city governing body before the close of the hearing to legalize the road. The city governing body shall consider a claim for damages unless the city governing body determines that:

(a) At the time the person acquired the structure, the person had a reasonable basis for knowing that the structure would encroach upon the road;

(b) Upon the original location of the road, the person received damages;

(c) The person or the person's grantor applied for or assented to the road passing over the property; or

(d) When making settlements on the property, the person found the road in public use and traveled.

(3) The compensation allowed under this section shall be just compensation for the removal of the encroaching structure.

(4) The city governing body may proceed to determine compensation and acquire the structure by any method authorized by law or by the city charter.

(5) If a city governing body determines that removal of the encroaching structure is not practical under this section, the city governing body may acquire property to alter the road being legalized. [1989 c.375 §3]

223.950 Order under road legalization proceeding. (1) After considering matters presented in a proceeding to legalize a road under ORS 223.935 to 223.950, a city governing body shall determine whether legalization of the road is in the public interest and shall enter an order abandoning or completing the legalization procedures on the road.

(2) When a city governing body legalizes a road under ORS 223.935 to 223.950, the city governing body shall cause the road to be surveyed and the centerline and right of way to be monumented by a registered professional land surveyor. The survey map and narrative for such survey shall be prepared and filed with the county surveyor in accordance with ORS 209.250.

(3) Courts shall receive any order filed under this section as conclusive proof that the road exists as described in the order.

(4) Upon completion of the legalization procedures under ORS 223.935 to 223.950:

(a) Any records showing the location of the road that conflict with the location of the road as described in the order are void; and

(b) The road exists as shown on the order legalizing the road. [1989 c.375 §4]