Local Improvement Districts (LIDs) are governed by three discreet sources of City legislation – the City Charter, Code Section 7.04, and Resolution 1200 (CGMC Appendix VI). Each are reviewed separately below.

City Charter. The City Charter provisions governing the creation of LIDs are standard and permissive. They are set out, below, for your convenience. I call attention to certain provisions delegating authority to set LID requirements by ordinance. The only requirement set by Charter is that sufficient remonstrances will delay a public improvement project proposed to be paid for by assessment by six (6) months.

> **Chapter X, PUBLIC IMPROVEMENTS**
>
> Section 37. Procedure.
>
> The Council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement. A proposed public improvement may be suspended for six months upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance.
>
> Section 38. Special Assessments.
>
> The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance.

Cottage Grove Municipal Code (CGMC)

CGMC 7.04 – Creation of Local Improvement Districts

Many of the Code's provisions echo state law, precisely. The following outlines my comments on sections that could (and in some cases probably should) be amended for various reasons.

Section 7.04.120.A - Final assessment ordinance

> A. When the improvement has been completed, the recorder or other person designated by the council, shall prepare the proposed assessment to the respective lots within the assessment district and file it in the appropriate city office.

This subsection seems to unnecessarily limit the City's options. Most LID ordinances (and state statute) allow a City to lien property in estimated or actual improvement costs. However, 7.04.120.A states that Cottage Grove shall prepare the proposed assessments "When the improvement has been completed . . ." I recommend amending the Code to provide for assessments based either on estimates or final construction costs, as in other cities. In the event estimates are incorrect, assessments are then adjusted to reflect actual costs. See, ORS 223.393 and 223.395.

CGMC 7.04.140, Assessment Segregation reflects ORS 223.317, but requires the City to obtain an appraisal of the entire property and of its segregated portions. That process could be time consuming and costly. I'm not sure an appraisal is needed. One is not required by statute. However, if desired by the City, consider shifting that burden to applicants to submit with their segregation request.

Also, **7.04.140** includes only permissive "may" language, that doesn't take into account ORS 223.317 (2):

> (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.

While the second amendment to this section is required, both are recommended.

CGMC 7.04.200 and 210 both adopt specific sections of ORS "by reference" and make them "part of this chapter." Because a City can only adopt existing state law at the time of such adoption and incorporation, these sections would be governed by state law as it existed in 1984. Both referenced state statutes have been amended at least twice since then - once in 1991 and also in 2003. Therefore, I recommend amending these sections to update the referenced state law.

Similarly, despite using slightly broader language **7.04.180 and .190** to reference the procedures and provisions of Oregon Revised Statutes, each of these sections would benefit by an updated reference to current state law.

CGMC 7.04.240, Warrants was repealed in 1984. **7.04.250,** however, establishes "Warrant interest rates." Does the City have any remaining, outstanding warrants carried over since 1984? If not, I recommend repealing 7.04.250.

7.04.260, Conditions precedent, Subsection B, prevents a person from paying an assessment lien in installments, " . . . if, at the time of the application for payment in installments, such person has a delinquent account with the city involving a lien for local improvements unless specifically approved by the city council."

The right to apply and pay assessment in installments is a statutory right that cannot be abrogated in this manner. I understand not wanting to have to go after the same owner for payments on two separate properties, but the City's Code cannot eliminate the statutory right to pay assessments in installments. Instead, the City has the right to pursue foreclosure for the default on the first property.

7.04.290 Delinquent taxes as default.

> Taxes should be kept current by property owners on all property upon which there is an assessment lien. In the event property taxes are delinquent by two-thirds of a year or more on a parcel subject to an assessment lien, the assessment agreement shall be deemed to be in default and shall be subject to foreclosure the same as if an assessment installment payment was not made. (Ord. 2721 §2(part), 1993; Ord. 2542 §2D, 1984)

This section presents a creative solution to a common LID problem in the event of County foreclosure, which can result in the loss of City real property security. While unique, I see no immediate legal prohibitions to retaining it in the City's Code. However, the City will need to be sure to include this as an installment payment agreement term, based upon the Code authority.

7.04.300 Amount subject to installment payments.

> Developers shall be required to deposit with the city in advance of construction, twenty-five percent of the cost of improvements which deposit shall be in the form of cash, securities or other mutually agreeable negotiable instrument if the developer desires to finance more than seventy-five percent of the cost of such improvement. In the event a developer chooses to deposit collateral and to finance one hundred percent of the improvement under this chapter the deposit shall be reduced annually in a pro rata share equal to the reduction of principal on the assessment balance. The terms of such collateral deposit shall provide that the city be entitled to use such collateral as an offset for the unpaid lien balance in connection with a foreclosure of such lien. Interest or dividends from collateral shall remain the property of the applicant and shall be distributed to the applicant at the option of the applicant. (Ord. 2721 §2(part), 1993; Ord. 2542 §2E, 1984)

I'm not familiar with this type of provision in the context of an LID ordinance. I think it's intended to set up a reimbursement district type of arrangement. If so, I recommend removing it from the LID code and instead adopting a more comprehensive and clearer reimbursement district framework by separate ordinance.

Similar to 7.04.260, **7.04.310, Planning or zoning of properties subject to liens**, prevents the City from accepting or processing any land use or building permit application for property upon which there is a delinquent assessment lien. Oregon's land use and building permit laws do not allow for such a prohibition – although a property owner could potentially contractually limit their development rights.

CGMC 7.04.010, Title, states,

> "The implementation of this title shall be pursuant to Resolution No. 1200 which shall be placed in the Municipal Code as Appendix VI."

I recommend reviewing **Resolution 1200, CGMC Appendix VI** closely to determine whether its terms should be repealed and adopted internally as a policy or incorporated into CGMC 7.04. If retained, Section 2. Staff Responsibilities, Subsection 3, states:

> C. To assure the City does not exceed the legal debt margin of 3% of the true cash value within the City boundaries.

This Subsection 2.C doesn't fully reflect ORS 223.295(1), Limit on city indebtedness. That statutory section states:

> (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.

If retained, be sure to interpret this City debt limit standard consistently with this state limit.

The following sets out the primary sections of state law governing the process to create a local improvement district:

ORS 223. Assessments for Local Improvements, in relevant part:

223.387 Description of real property; effect of error in name of owner. CGMC 7.045.030 and .040, state nearly verbatim.

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. CGMC 7.04.070.C

(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]