

Local Improvement Districts & Reimbursement Districts

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Overview

- Both LIDs and reimbursement districts are:
 - Tools for dividing the cost of public improvements among benefitted properties
 - Generally formed using similar processes
 - Districts in the sense of an “area,” not a separate public body
- However, they differ in a few key ways:
 - Initial source of funds and who initiates formation
 - When the benefitted property owners pay
 - Source of authority—statutory or not
 - Whether or not they impose liens

Local Improvement Districts

- Authorized by statute (ORS 223.387-401)
 - But ORS 223.399 authorizes local governments to vary from statutory procedures, and many do
- Local government initiates process (or can be requested by property owners and then initiated by governing body) and provides the initial funds (sometimes via bond)
- The amount allocated to each benefitted property becomes a lien on the property with priority over all other liens (except tax liens)
- Property owners have a specified period of time to pay in full or the option to enter an agreement to make installment payments

Reimbursement Districts

- No statutory authority; authorized by local ordinance
- Developer (which could be a local government) requests formation and provides the initial funds
 - Generally, used when a developer constructs a public improvement needed to serve its property, but which also serves other properties expected to develop in the future
- Does not impose liens on the benefitted properties, but formation resolution is often recorded to provide notice to future owners
- Benefitted property owners pay when (and only if) they develop their property
 - Local government collects payment at time of issuance of building permit (or other permit required to develop the property, such as a connection permit) and remits to original developer
 - Generally, the requirement to pay expires if property does not develop within 10 years, with a possible extension
 - This means reimbursement is not guaranteed
- Commonly referred to as “late comer agreements”

Formation Process*

- Initiation
- Engineer's Report (or Manager's Report, etc.)
- Formation Hearing
- Approval of Formation
- Construction of Improvements
- Post-Construction Report, Hearing, and Resolution
- Payment

*Because processes can vary by jurisdiction, much of the information in this presentation is based on generalities

Engineer's Report

- Prepared by local government staff or a consultant
 - For a reimbursement district, the application submitted by the developer is often essentially a draft Engineer's Report
- Describes the public improvement project; some codes limit which types of improvements qualify
- Sets out the boundaries of the district based on which properties will be benefitted
- Estimates the costs of the improvements
- Describes a proposed formula to distribute costs among the benefitted properties
- Applies the formula to the estimated total cost in order to estimate the cost share for each benefitted property

Engineer's Report – The Formula & Costs

- Formula for distributing costs:
 - Under the LID statutes, the formula is based on the “special or peculiar benefits accruing to the lot;” ordinances often use “just and reasonable”
 - Sometimes, less than 100% of the cost is allocated to benefited properties, e.g. to reflect the portion of the benefit that would accrue to the city as a whole
 - For reimbursement districts, it's important to consider what portion of the land is developable
- Possible factors:
 - Frontage
 - Square footage
 - Number of utility connections
- Eligible costs are often more limited for reimbursement districts (engineering, construction) vs. LIDs (legal, administrative, construction, engineering, interest, and other financing costs)
- Reimbursement districts generally include an administrative charge for the local government's services in administering the program and an interest rate for the benefit of the developer

Formation Hearing

- Notice to each owner of property within the proposed district boundary, generally including most of the information in the Engineer's Report
- Remonstrance process
 - Referenced in statute, but not required or created by statute
 - Found in many local government charters or codes for LIDs
 - Generally, if the owners of a specified percentage of the properties within the proposed district object, formation is delayed by a specified period of time
 - Local governments commonly require non-remonstrance agreements in connection with developments where an LID is foreseen as a possibility (e.g. to improve a substandard street in the future). Generally, it is a covenant binding on future owners.

Approval of Formation

- Can be by resolution, order, or ordinance depending on the local code
- Establishes the district boundaries (benefitted properties), estimated total cost, formula for apportioning costs, and estimated cost for each property
- Can be consistent with the Engineer's Report or the governing body may modify those recommendations based on the hearing
- For LIDs, the estimated cost for each property immediately becomes a lien on that property (to be replaced by the final cost when it is determined).
- For reimbursement districts, there is also generally then an agreement entered between the developer, including provisions for indemnification of the city in regard to formation and administration of the district

Construction of Improvements



- Sometimes, these processes are initiated after construction is already completed. In those cases, the process ends here because the actual costs (rather than estimates) were used in the earlier steps.

Post-Construction Report, Hearing, and Resolution

- Post-Construction Report
 - Based on the cost allocation formula approved at formation
 - Uses the **actual construction costs** rather than an estimate to determine the final amounts allocated to each benefitted property
- Hearing and Resolution
 - Notice sent to the owners of the benefitted properties
 - Establishes the final costs for each property
- Some cities omit this step for reimbursement districts and the fee is based on the estimated cost, not to exceed actual costs

Other Considerations - LIDs

- Oregon Constitution, Art. XI, Section 11b(2)(d) relates to LID assessments under Measure 5. In order to qualify as an LID assessment and not a tax (subject to compression, etc.):
 - The assessment must involve a public capital construction project benefitting specific properties;
 - The cost of the improvement must be assessed against the properties at the completion of the project; and
 - The property owner must be given the option to pay off the assessment in installments over at least 10 years
- ORS 223.405-485 and some local codes provide for reassessment—essentially a “do-over” if the original LID process is invalid or even just questionable
- ORS 223.505 et seq. provides for enforcement of liens and foreclosure sales

Examples and Further Reading

- LID ordinances and cases
 - Hillsboro Municipal Code Subchapter 3.16
 - Gresham Revised Code Article 11.10
 - *Martin v. City of Tigard*, 183 Or App 408 (2002).
 - *Bullock v. City of Ashland*, 241 Or App 378 (2011).
 - *Hill v. City of Portland*, 293 Or App 283 (2018).
- Reimbursement district ordinances and cases
 - Hillsboro Municipal Code Subchapter 3.18
 - Gresham Revised Code Article 11.15
 - *Baker v. City of Woodburn*, 190 Or App 445 (2003).
 - *Kieling v. City Council (Sherwood)*, 239 Or App 441 (2010).

Thank you!

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