

## **Title II**

# **PUBLIC WAYS AND PROPERTY**

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## **HISTORY:**

The original CHAPTER 1 (*Ord. 216, last amended by Ord. 440, 8-17-62*) promulgated regulations for Valley View Cemetery. The original CHAPTER 4 (part of the original 1963 Code) regulated trees and shrubbery.

# Chapter 1

# RIGHTS-OF-WAY

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## 2.1.1 DEFINITIONS

For the purpose of this Title, the following shall mean:

**CITY:** The City of Vale, Oregon.

**PERSON:** Individual, corporation, association, firm, partnership, joint stock company, and similar entities.

**PUBLIC RIGHTS-OF-WAY** include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths [*sic*], public easements, and all other public ways or areas, including subsurface and air space over these areas.

**WITHIN THE CITY:** Territory over which the City now has or acquires jurisdiction for the exercise of its powers.

## 2.1.2 JURISDICTION

The City of Vale has jurisdiction and exercises regulatory control over all public rights-of-way within the City under the authority of the City Charter and state law.

## 2.1.3 SCOPE OF REGULATORY CONTROL

The City has jurisdiction and exercises regulatory control over each public right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way. The City has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means.

### **2.1.4 CITY PERMISSION REQUIRED**

No person may occupy or encroach on a public right-of-way without the permission of the City. The City grants permission to use rights-of-way by franchises, licenses, and permits.

### **2.1.5 OBLIGATIONS OF THE CITY**

The exercise of jurisdiction and regulatory control over a public right-of-way by the City is not official acceptance of the right-of-way, and does not obligate the City to maintain or repair any part of the right-of-way.

### **2.1.6 SEVERABILITY**

Invalidity of a section or part of a section of this Chapter shall not affect the validity of the remaining sections or parts of sections. (*Ord. 766, 2-25-97*)

# Chapter 2

# SIDEWALKS, CURBS AND GUTTERS

## Sections

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### 2.2.1 AUTHORITY OF STREET COMMITTEE

The power to construct, maintain, improve or repair in whole or in part any sidewalk, curb or gutter in the City is hereby delegated to the Street Committee, and the Committee is vested with the authority to compel the property owner to do the work or to do the same on behalf of the City at the expense of the property owner as hereafter provided.

### 2.2.2 PROPERTY OWNER TO MAINTAIN SIDEWALKS

Any person owning real property within the Corporate Limits of the City, shall upon thirty (30) days written notice from the Street Committee, proceed at his own expense to construct, maintain, improve or repair any sidewalk, curb, or gutter that abuts upon his real property, such improvement to be made in accordance with the instructions of *[sic]* any under the supervision of the Street Committee and in accordance with the provisions of this Chapter.

### 2.2.3 CONSTRUCTION BY CITY

In the event that any property owner so notified shall fail or neglect to so improve or construct the sidewalk, curb or gutter after the notice, or shall fail or neglect to comply with the instructions of the Street Committee and the provisions of this Chapter, the Street Committee may order the construction or Improvements done or redone at the expense of the City, and the actual cost of the labor and material used in the connection shall be a lien upon any lots abutting upon the sidewalk, gutter, or curb so constructed or improved.

### 2.2.4 LIEN AGAINST PROPERTY

When any sidewalk, curb or gutter has been constructed, reconstructed or improved by the City under the provisions of Section 2.2.3 of this Chapter the amount expended by the City shall be entered by the Manager in his judgement *[sic]* docket against the person owning the property abutting upon the sidewalk, curb or gutter, and a copy of the entry served forthwith upon the owner as hereafter provided.

At any time thereafter an execution may issue at the instance of the Street Committee to enforce and collect such judgement *[sic]*, which execution shall be served and executed as in cases of judgments recovered against real property in the circuit courts of the State; and any such real property against which any judgment shall have been entered may be sold at public sale after giving thirty (30) days' published notice in the official newspaper. Such sale to be made by the Marshal under the direction of the Street Committee.

The Manager shall be allowed the sum of two dollars and fifty cents (\$2.50) for entering up any lien and judgment as herein provided for, which the sum shall be taxed as costs against any property to which any lien as herein provided for would attach, and shall be counted as part of the lien for repairs and improvements and be paid by the party against whom the lien is entered. (*Ord. 832, 3-11-2003*)

### 2.2.5 REDEMPTION OF PROPERTY

Any property sold as herein provided shall pass and convey all the right, title, and interest of the person owning the same, subject to redemption as follows: the owner of property wishing to redeem the same after it been sold shall pay the full costs of improvements and repairs, and, in addition thereto, shall pay ten per cent (10%) per annum interest on the whole amount of such repairs and improvements, and ten per cent (10%) penalty thereon, *provided* that such redemption shall be made within one (1) year from the date of the sale of the property; if there is no redemption of property sold hereunder within one (1) year from the date of sale, the Manager shall certify all the proceedings of any and all sales where the property remains unredeemed to the circuit court of the State, for Malheur County, when the sale of such real property shall be confirmed as though the same had been made in the circuit court in the first instance, and at any time thereafter, on demand of any person holding any certificate of sale hereunder shall be entitled to a deed for any real property so purchased at any sale herein authorized; such deed to be executed by the Marshal under the same conditions and formalities as sheriff's deed concerning real property sold on execution. (*Ord. 832, 3-11-2003*)

### 2.2.6 NOTICES

All notices as herein provided for shall be served by the Marshal by delivering to the owner of property abutting upon any street or alley, to be improved, a copy of the notice ordering such repairs or improvements, as issued by the Street Committee or Manager, and the Marshal shall return the original notice to the Manager, with the date of service endorsed thereon; all copies of such notices to be prepared and certified to by the Manager to the effect that they are true copies of the original notice. (*Ord 215, 6-19-47; amended by Ord 440, 8-17-62; amended by Ord. 832, 3-11-2003*)

### 2.2.7 SIDEWALK SPECIFICATIONS

All sidewalks hereafter constructed in the City shall conform to the following specifications:

- (A) *Curb.* The curb shall be sixteen inches (16") deep, six inches (6") wide at the top and batter out at the rate of one inch (1") in one foot (1'), and shall be leveled or rounded on the upper and outer edge. (*Ord. 188, 11-13-38*)
- (B) *Foundation.* The space over which the walk is to be laid shall be excavated to a depth of six inches (6") below the proper subgrade and such space filled with gravel and thoroughly compacted by rolling or tamping. The finished subgrade shall be parallel with the surface of the finished walk. The area below the rolled or tamped gravel may be any firm and compact soil or material so as to furnish a satisfactory foundation for such sidewalk and gravel base. When the sidewalk does not cover the entire width from property line to curb, the area not covered by the sidewalk shall be filled or excavated to the top of the curb. (*Ord 236; 4-5-51*)
- (C) *Gravel and/or Sand.* The rock for making the concrete shall be good, clean river gravel and sand, with boulders not larger than two inches (2") largest diameter, or satisfactory hard broken stone no larger than the boulders, and not smaller than one-half inch ( $\frac{1}{2}$ ") in diameter, and either and all thereof shall be satisfactory to the Engineer. The same shall be thoroughly screened if deemed necessary by the Engineer, who may also, in his judgment, require the same to be washed.
- (D) *Cement.* All cement shall be artificial Portland cement, of recognized merit and established quality, free from lumps and deterioration or account of exposure, or otherwise, and at least equal to the standard specifications for Portland cement adopted by the American society for testing materials, and must be approved by the Engineer, who shall have access to it for the purpose of testing it for a reasonable time before it is used.
- (E) *Sand.* All sand must be clean, sharp sand, free from clay, loam, earth, dirt, or other extraneous matter, and washed when required by the Engineer. (*Ord. 188; 11-13-38*)
- (F) *Concrete.* Upon the foundation and base being prepared as herein before specified, the concrete shall be laid to a depth of four inches (4") and shall be made as follows: (*Ord. 236; 4-5-51*) The cement, sand and gravel or sand and stone and diatomaceous earth will be thoroughly dry mixed and then made into a mortar with the least possible quantity of water so there shall be no free water in the mass or running from it. Such mixing must occupy at least one and one-half (1.5) minutes in actual mixing time. The concrete shall be composed of one (1) part of Portland cement, two (2) parts of sand and three (3) parts of gravel or stone, by volume, and not less than three per cent (3%) by weight of diatomaceous earth. The upper surface shall be on grade with sufficient slope to drain from property line to curb. Only enough concrete shall be mixed that may be placed within forty-five (45) minutes, and no concrete shall be placed after forty-five (45) minutes from the time of mixing, and no retempering shall be permitted.
- (G) *Wearing Surface.* The wearing surface shall be thoroughly tamped until all coarse parts are worked in and until at least one-half inch ( $\frac{1}{2}$ ") of mortar appears on the surface. It shall be cut into slabs so as to form a square, and of the same length as the width of the walk on all walks six feet (6') wide and less, and on all walks eight feet (8') and over the same shall be cut into slabs by first dividing the walk lengthwise in the center and transversely so that each slab shall be equal in size to one-half ( $\frac{1}{2}$ ) the width of the full walk, or such other size or shape as the Engineer may direct, and shall be protected from the action of the elements and persons and animals until thoroughly set.
- (H) *Upper and Outer Surface of Curb.* The upper and outer surface of the curb shall be treated in the same manner as the wearing surface of the sidewalk, and the material used in all of the curb shall be the same as prescribed for the sidewalk. The boards for forms shall be planed or surfaced on the side coming into contact with the concrete.
- (I) *Corner at Intersecting Streets.* At the intersecting streets the corner will be a quadrant, with a three foot (3') radius, or such other radius as may be designated by the Engineer. The upper and outer edge must be protected by a wrought-iron angle iron, one-fourth of an inch ( $\frac{1}{4}$ ") thick, with one and one-half inch (1.5") legs, bent to the proper radius and firmly fastened to the concrete

by five (5) anchor irons three-eighths of an inch ( $3/8$ " ) thick, with a lug on the end projecting into the concrete at least six inches (6"), and imbedded therein at the time of the laying. The upper and outer face of the angle iron shall conform to the place of the finished curb. Where there are catch basins the corner block must be so made as to connect with the iron grating and permit the unmolested flow of water into the basin. Movable cement covers of the proper size must also be made over catch basins, with rings to raise them.

- (J) *Curbs and Gutters.* The Council may by ordinance require the construction of sidewalks without the construction of curbs, or curbs without the construction of sidewalks, or both, in its discretion, and may require gutters to be constructed at the time and as a part of the curbs, or not, as it may determine. Where gutters are required to be constructed they shall be constructed at the same time the curb is constructed, and as a part thereof, and shall be constructed as though the gutter is a part of the same work as the curb. The specifications for materials and manner of performance of the work of construction of sidewalks and curbs shall govern and apply to gutters, and all other requirements of this Chapter, as to the construction and supervision thereof, shall apply to gutters. The gutters shall be constructed under the direct supervision of the Engineer and subject to his approval, and shall be as nearly uniform as possible throughout the City, and at least eight inches (8") wide, with the outer or side next to the roadway conforming to the grade of such roadway where the two (2) unite. The grades shall be and are as established by the Engineer.
- (K) *Name of Streets.* At the intersection of cross streets the names of the streets shall be impressed in letters or figures at least three inches (3") in height in the wearing surface of the sidewalk, and the name of the contractor doing the work, and the year when done, shall be also impressed therein, for fifty feet (50') of walk and curb as constructed, in letters and figures one inch (1") in height.
- (L) *Inspection.* Whenever any cement or artificial stone sidewalk or curb is constructed upon any street under a permit, as provided for in this Chapter or the Charter, the Engineer, before issuing a certificate to the effect that the work and material conform to the requirements of the specifications set forth in this Chapter, is authorized to make any test or examinations that he may deem necessary, and in so doing he may break the artificial stone or cement work to an extent not exceeding two (2) lineal feet of curb, and nine square feet (9 sq.ft.) of sidewalk, doing as little damage as may be, and the same shall be made good and repaired by the contractor at his, the contractor's own expense. (*Ord. 188; 11-13-38*)
- (M) *Cross Forms; Expansion Joints.* At each division cross forms shall be put in the full width of the walk at right angles to the side forms. Cross forms shall be spaced from ends and from each other so that they will cut the walk transversely into slabs, as hereinbefore specified.

A metal parting strip one-half inch ( $1/2$ " ) thick shall take the place of the cross forms, at least one (1) every fifty (50) linear feet of walk. The parting strip shall be removed before the wearing surface is laid, and the opening thus made shall be filled with sand, and after laying the wearing surface the portion immediately above such sand filled space shall be marked or lined through the wearing surface. Similar parting strips shall be used and joints made where any new walk abuts a curb, crosswalk or another artificial stone walk.

All forms must be thoroughly wet before placing any material against them.

*Provided,* however, the Council may, by resolution, provided [*sic*] for monolithic construction, in which event the above provisions will not apply and in which event the sidewalk, curb and gutter or the sidewalk and curb or the curb and gutter, as the case may be, shall be constructed as a unit, and in such event a metal parting strip every twenty-five (25) linear feet of walk shall take the place of the cross forms. (*Ord. 424; 8-9-55*)

- (N) *Forms.* When wooden forms are used they shall be free from warp, not less than two inches (2")

thick, clean and free from all mortar.

Forms shall be well staked to the line and grade set by the Engineer, the upper edges conforming with the line of the walk when finished, and shall have sufficient rise from the curb side to the property line for proper drainage, but not over two inches (2") in ten feet (10'). (*Ord. 188; 11-13-38*)

- (O) *Sidewalks, Width of.* On all streets approximately sixty feet (60') wide, other than those herein specifically mentioned, the sidewalks shall be five feet (5') wide, laid one foot (1') from the property line, and the outer edge of curb shall be eleven feet (11') from the property line.

On all streets under approximately sixty feet (60') wide and not narrower than approximately forty feet (40'), other than the ones hereinafter specifically mentioned, the sidewalks shall be five feet (5') wide, one foot (1') from the property line, and the curb shall be ten feet (10') from the property line; on all other streets, except as heretofore and hereinafter mentioned the sidewalk shall be five feet (5') wide and the outside of curb shall be eleven feet (11') from the property lines; provided, that

- the sidewalk on Main street, from C street to the passenger depot grounds on right of way of the branch lines of the Union Pacific Railroad Company, shall be ten feet (10') wide, laid from the property line to the curb line;
- on Court street from Washington street to B street, the sidewalks shall be ten feet (10') wide, laid from the property line to the curb;
- on Bryant street, from Washington street to B street, the sidewalks shall be eight feet (8') wide, laid from property line to curb;
- on Holland street the sidewalks shall be six feet (6') wide from A street to the south side of F street and laid one foot (1') from property line with the outside of curb eleven feet (11') from property line;
- on West street, from Harrison street south to city limits, the sidewalks shall be five feet (5') wide, laid one foot (1') from the property line, and the outside of the curb eleven feet (11') from the property line;
- on A street for its entire length from its easterly to its westerly limits, the sidewalks shall be laid from the property line to the curb and the curb shall be ten feet (10') from the property line;
- on Washington street for its entire length from easterly to its westerly limits, the sidewalks shall be laid from the property line to the curb and the curb shall be ten feet (10') from the property line;
- on B street, from Longfellow street to Bryant street, the sidewalks shall be ten feet (10') wide, laid from the property line to curb and on B street from Bryant street to West Main street, the sidewalks shall be six feet (6') wide, laid one foot (1') from property line; and the outside of the curb shall be eleven feet (11') from the property line;
- on West Main street, from A street to the south boundary of the City, the sidewalks shall be six feet (6') wide, laid one foot (1') from the property line, and the outside of the curb twelve feet (12') from the property line;
- providing further, that on the east side of Cottage street from B street to G street, the south side of E street to Bryant street, the west side of Holland street from B street to E street, and on the north side of E street from Cottage street to Holland street the sidewalks shall be seven feet (7') in width and shall abut the curb or may be installed as a unit with the curb. (*Ord. 236; 4-5-51, amended by Ord. 802, 6-8-99*)

### **2.2.8 CROSSWALKS**

Crosswalks shall be of the same materials, and in the same proportions, and laid in the same manner as sidewalks, except that the concrete shall be laid not less than ten inches (10") deep, and the wearing surface shall be not less than two inches (2") deep, and the base of the crosswalks connecting all six foot (6') wide walks shall be six feet (6') wide and rounded to the top so that the top will be four feet (4') wide on the level, and all crosswalks connecting sidewalks narrower than six feet (6'), the base shall be five feet (5') wide and rounded to the top so that the top of the crosswalks will be three feet (3') wide on the level; and for all other crosswalks, the base shall be six feet (6') wide and rounded to the top so that the top will be four feet (4') wide on the level.

### **2.2.9 PERMIT**

No person shall commence to lay or construct any sidewalk without first obtaining a permit therefor from the Engineer; the application for the permit shall be written or printed, shall state the distance the same is to be laid, and shall describe the lot and block, or fraction of a lot or block or tract, where the same is proposed to be laid; the permit shall be issued in writing, without charge, and shall specify the name of the owner of the lot or block, the name of the contractor, if any, the description of the property along which the same is to be laid, the date, the time of commencement, and the time of the completion thereof, and be signed by the Engineer.

All side and crosswalks shall be constructed solely according to the specifications contained in this Chapter, and the permit thereof shall so state.

### **2.2.10 GRADE**

No sidewalk or curb shall be constructed until the grade therefor shall have been furnished by the Engineer, and every walk and curb constructed must be constructed on such grade. The grade established by the Engineer must be uniform throughout the City.

### **2.2.11 DRAINS**

All drains and waterways under cement or concrete walks must be of cement tile or hard-burned clay tile, of uniform size and shape, free from cracks and imperfections, and not less than six inches (6") in diameter, and larger if required by the Engineer, and shall be located and laid as he may prescribe, but in any event must possess sufficient capacity to carry all irrigation, waste, and other water. The Engineer is authorized to require such other drains as he may think necessary.

### **2.2.12 FILLS**

When any fill is required the top thereof must extend at least six inches (6") on either side beyond the walk, and the sides or banks of the fill must be left with a slope or angle of repose of at least one foot (1') to two feet (2'), and, in addition, the fill must conform to the requirements of the Engineer.

### **2.2.13 PROTECTION**

When completed the wall and curb must be covered with sand or other suitable material after the cement has set, and wet frequently, for at least three (3) days, and protected from travel during that period. The forms shall not be removed until this period has elapsed, and not then unless the walk is thoroughly hard, and upon removal, earth must be filled in and banked along the edges of the walk.

### **2.2.14 RECONSTRUCTING OR REPAIRING WOODEN WALKS**

No wooden sidewalk shall be built or constructed within the City. No wooden walk shall be repaired except by permission of the Council, granted in regular session, and when same is not granted shall not be repaired but shall be replaced by an artificial stone walk.

### **2.2.15 ENGINEER; AUTHORITY OF**

The Engineer shall have full supervision over the construction and repair of all sidewalks and curbs, and a violation of his rules and requirements, when not contrary to this Chapter and the law, shall be deemed and held to be a violation of this Chapter and punished accordingly, as herein provided for in this Code. (*Ord. 188, 11-13-38*)

### **2.2.16 DUTIES OF ENGINEER**

The City's Public Works Supervisor is empowered to perform any of the functions and discharge any of the duties required of and placed on the Engineer. In the absence of the Public Works Supervisor, the Engineer's duties and functions may be delegated to another City official by the City Manager or, alternatively, by the Council. (*Ord. 749, 9-12-95, amended by Ord. 832, 3-11-2003*)

# Chapter 3

# CITY PARKS

## Sections

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### 2.3.1 PARK REGULATIONS

(A) The following are prohibited within all City parks, without advance authorization from the City Manager:

- (1) Automobiles, or other motor vehicles;
- (2) Livestock;
- (3) Tents;
- (4) Camping;
- (5) Metal detecting.

(B) The following are prohibited within all City parks:

- (1) Firearms;
- (2) Trapping squirrels;
- (3) Defacing park property;
- (4) Littering;
- (5) Possession of alcoholic beverages without a permit issued pursuant to Section 5.13.5 of this code. (*Ord. 832, 3-11-2003*)

### 2.3.2 SIGN

A sign, in both English and Spanish, shall be posted at Wadleigh Park stating the prohibitions of this chapter together with the prohibitions of Section 6.2.5 of this code relating to dogs in City parks.

### 2.3.3 PENALTIES

Any person violating any provision of this chapter shall be subject, upon conviction, to a fine of not more than \$750 per occurrence. (*Ord. 746, 8-8-95, renumbered by Ord. 779, 8-26-97, eff. 9-26-97*)

# Chapter 4

# LOCAL IMPROVEMENT DISTRICTS

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**2.4.1 SHORT TITLE**

This Ordinance shall be known as the "Local Improvement District" ordinance of the City of Vale, Oregon.

**2.4.2 DEFINITIONS**

As used in this Ordinance unless the context requires otherwise:

- (A) *"Actual Cost"* means all direct or indirect costs incurred by the City in order to deliver goods or services or to undertake a capital construction project. The "actual cost" of providing goods or services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost of making a good or service available to the property or property owner, whether stated as a minimum fixed or valuable amount. "Actual cost" includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.
- (B) *"Assessment for Local Improvement"* means any fee, charge or assessment that does not exceed the actual cost incurred by the City for design, construction and financing of a local improvement.
- (C) *"Bonded Indebtedness"* means any formally executed written agreement representing a promise by the City to pay to another a specified sum of money, at a specified date or dates at least one (1) year in the future.
- (D) *"Capital Construction"* means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, which is expected to have a useful life of more than one (1) year, and includes, but is not limited to:
  - (1) Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.
  - (2) Acquisition, installation of machinery or equipment, furnishings or materials, which will become an integral part of a structure.
  - (3) Activities related to the capital construction, such as planning, design, acquisition of interim or permanent financing, research, land use and environmental impact studies; acquisition of permits or licenses or other services connected with the construction.
  - (4) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital construction.
- (E) *"Capital Improvements"* means land, structures, facilities, as that term is defined in Oregon Laws (ORS: 288.805), machinery, equipment or furnishings having a useful life longer than one (1) year.
- (F) *"City"* means the City of Vale, Oregon.
- (G) *"Council"* means the Vale City Council.

- (H) *"Estimated Assessment."*
- (1) *Estimated Assessment* means, with respect to each property to be assessed in connection with a local improvement, the total assessment that, at the time of giving notice of the assessment and the right to object or remonstrate, the City estimates will be levied against the property following completion of the local improvements. The estimate shall be based on the City's estimate at that time of the actual costs of the local improvement and the proposed formula for apportioning the actual costs to the property.
  - (2) 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.
- (I) *"Exempt Bonded Indebtedness"* means:
- (1) Bonded indebtedness authorized by a specific provision of the Oregon Constitution.
  - (2) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements, that was issued as a general obligation of the City on or before November 6, 1990.
  - (3) Bonded Indebtedness incurred or to be incurred for capital construction or capital improvements, that was issued as a general obligation of the City after November 6, 1990, with the approval of the electors of the City.
- (J) *"Exempt Bonded Indebtedness"* includes bonded indebtedness issued to refund or refinance any bonded indebtedness described in the above definition of "Exempt Bonded Indebtedness".
- (K) *"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.
- (L) *"Financing."*
- (1) "Financing" means all costs necessary or attributable to acquiring and preserving interim or permanent financing of a local improvement.
  - (2) The costs of financing may include the salaries, wages and benefits payable to employees of the City 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 the City as financing costs of a local improvement or any part thereof, the City shall establish a record keeping system to track the actual work done or services performed by each employee on or in connection with such local improvement.
  - (3) Financing costs that are to be incurred after the levy of a final assessment may be included in the final assessment based on the City's reasonable estimate of the financing costs if the City first documents the basis for the estimate and makes the documentation available to interested persons on request.
- (M) *"Local improvement"* is a capital construction project or part thereof undertaken by the City pursuant to the procedure to be followed in making local assessments for benefits from a local improvement upon the lots which have been benefitted by all or part of the improvement:

- (1) which provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
  - (2) the costs of which are assessed against those properties in a single assessment upon the completion of the project; and
  - (3) for which the payment of the assessment plus appropriate interest may be spread over a period of at least ten (10) years by the property owner.
  - (4) The total of all assessments for a local improvement shall not exceed the actual cost incurred by the City in designing, constructing and financing the project.
  - (5) For purposes of this section, the status of capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the specific benefit.
- (N) *"Lot"* means lot, block or parcel of land.
- (O) *"Manager"* means the City Manager of the City of Vale.
- (P) *"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 Malheur County Assessor.
- (Q) *"Property Benefitted"* means all property specifically benefitted by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the total cost of the improvement between the properties determined to be specially benefitted.
- (R) *"Recorder"* means the recorder, clerk or other person or officer of the City of Vale serving as clerk of the City or performing the clerical work of the City, or other official or employee as the governing body of the City shall designate to act as recorder. Unless otherwise designated by the City Council, the City Manager shall act as Recorder for the purpose of this ordinance.
- (S) *"Single Assessment"* means the complete assessment process, including preassessment, assessment or reassessment, for any authorized local improvement which provides the procedure to be followed in making local assessments for benefits from a local improvement upon lots which have been benefitted by all or part of the improvement.
- (T) *"Special Benefit Only to Specific Properties"* shall have the same meaning as "special and peculiar benefit" as that term is used in Oregon Law (See ORS 223.389).
- (U) *"Structure"* means any temporary or permanent building or improvement to real property of any kind, which is constructed on or attached to real property, whether above, on or beneath the surface.
- (V) *"Treasurer"* means the City elected or appointed official, however designated, charged by law with the responsibility for acting as custodian of and investment officer for the public moneys of the City. Unless otherwise designated by the City Council, the City Manager shall act as Treasurer for the purpose of this ordinance.
- (W) *"True Cash Value."* In determining the "true cash value" of taxable property for the purpose of calculating the total amount of indebtedness which may be incurred by the State or local governments under the Oregon Constitution or laws of the State of Oregon, the "real market value," as defined in Section 11 b (2)(a), Article XI of the Oregon Constitution, may be used if and to the extent that the "real market value" does not exceed the "true cash value."
- (X) 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. (*Ord. 832, 3-11-2003*)

### 2.4.3 PLANS AND SPECIFICATIONS

Whenever the Council shall determine to proceed to make a local improvement to be paid for in whole or in part by the property benefitted, the Council shall, by motion, direct the City Manager to have a report prepared containing the following information:

- (A) A description of the local improvement proposed.
- (B) Preliminary plans and outline specifications for such local improvement.
- (C) A description of the boundaries of the proposed local improvement district
- (D) A just and reasonable method for apportioning the actual costs of the local improvement to the properties benefitted.
- (E) A list of the properties benefitted by such local improvement, including the name of the owner of each property benefitted, and the address of such owner; the assessed valuation of each property, adjusted in accordance with Oregon law; and a statement of the amount of outstanding assessments against any property proposed to be assessed by the improvement.
- (F) The estimated actual cost of the local improvement.
- (G) The estimated proportionate actual cost of the local improvement to be assessed to each benefitted property.
- (H) The estimated portion of the actual cost of the improvement to be borne by any City funds, if any.
- (I) This report shall be filed in the office of the Recorder when completed. (*Ord. 832, 3-11-2003*)

## 2.4.4 ASSESSING

The Council shall consider the following in assessing costs of the local improvement:

- (A) The use of any just and reasonable method of determining the extent of the district boundaries consistent with the benefits derived, the Oregon Constitution and Oregon Laws.
- (B) The use of any method of apportioning the actual cost or estimated actual cost to be assessed is just and reasonable among the properties determined to be specially benefitted and consistent with the Oregon Constitution and Oregon Laws.
- (C) Payment by the City of all or any part of the actual cost or estimated actual cost of any improvement when, in the opinion of the Council, on account of topographical or physical conditions, unusual or excessive use by the general public, or other character of the local improvement, or when the Council otherwise believes it to be just and reasonable.
- (D) Other available means of financing the estimated actual cost of the local improvement, including federal or state grants-in-aid, sewer service or other types of services or charges, revenue bonds, general obligation bonds, or other legal means of finance. In the event any of such other means of finance are used, the Council may, subject to the constraints of the Oregon Constitution and Oregon Laws, in its discretion, levy assessments for Local Improvement Districts hereunder according to benefits to cover any part of the costs, subject to the constraints of the Oregon Constitution and Oregon Laws, of the local improvement not covered by such means.

## 2.4.5 RESOLUTION

- (A) After the City Manager's report has been filed with the Recorder, and after the Council has examined such report and found the same to be satisfactory, and the estimated cost and apportionment thereof to be reasonable and just, and after having found the boundaries of such improvement district to be properly determined, the Council may, by resolution, propose to make such an improvement, and to create a local improvement district. (*Ord. 832, 3-11-2003*)
- (B) The resolution shall state:
  - (1) The boundaries of such local improvement district.
  - (2) The proposed method of apportioning the estimated actual cost (estimated assessment) of the local improvement among the property owners.
  - (3) The portion of the estimated actual cost, if any, which the City shall pay.
  - (4) That such portion of the estimated actual costs (estimated assessment) which are assessed to the property owners shall be a charge and lien upon properties benefitted.
  - (5) The time and place for a public hearing.
  - (6) Direct the Recorder to provide a notice of said hearing as required by Oregon law which shall state that the Council shall hear and consider objections or remonstrances to the proposed improvement by any parties aggrieved thereby. The notice shall state that the Council, by resolution, has proposed to create the local improvement district and include the following:

“Unless those persons representing at least 66 2/3 percent of the proposed estimated assessment within said local improvement district file with the City Recorder a written objection and remonstrance against such proposed local improvement district prior to the public hearing or present their written or oral objections at the public hearing, the Council shall be deemed to have acquired jurisdiction to order the formation of the local improvement district to conform in all particulars to the plans and specifications previously adopted. Any such objection or remonstrance shall state the objections and grounds for such objection or remonstrance.”

### 2.4.6 NOTICES

- (A) *Form of Notice.* The Recorder shall also notify the owner of each lot proposed to be assessed by registered or certified mail, or by personal delivery of the amount of the estimated assessment proposed for that property, the date by which time objections shall be filed with the Recorder, and that any such objection shall state the grounds for the objection.
- (B) *Delivery of Notice.* Whenever a notice is required to be sent to the owner of a lot affected by a proposed assessment such notice shall be addressed to the owner or his agent. If the address of the owner or his agent is unknown to the Recorder, the Recorder shall mail the notice addressed to the owner or his agent at the city where such property is located. Any mistake, error, omission, or failure with respect to such mailing shall not be jurisdictional or invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been given by personal service upon the property owner, or, if personal service cannot be had, then by publication once a week for two successive weeks in a newspaper of general circulation in the City of Vale.

### 2.4.7 PREVENTION BY REMONSTRANCES

If those persons representing 66 percent or more of the proposed assessment within the local improvement district file with the Recorder a written objection or remonstrance against the proposed improvement such remonstrance shall be a bar to any further proceeding in the making of such improvement for a period of six months.

### 2.4.8 ORDINANCE CREATING LOCAL IMPROVEMENT DISTRICT

- (A) *Public Hearing.* After the public hearing, if the local improvement district has not been objected to by those persons representing at least 66 2/3 percent of the proposed assessment, the Council may provide for the creation of the local improvement district by ordinance. This ordinance shall describe the improvement(s) to be made and the boundary of the local improvement district. The Ordinance shall also provide that the estimated assessments against the properties benefitted shall be charges and liens against the property. The City may enforce collection of such assessments as provided by Oregon law.
- (B) *Adoption Process.* In creating the local improvement by ordinance, the Council shall consider the objections or remonstrances made and the reasons stated for them. The Council may adopt, correct, modify or revise the proposed assessments or estimated assessments and shall determine the amount of assessment or estimated assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement and shall by ordinance spread the assessments. The estimated assessment lien shall continue until the time the estimated assessments become a final assessment.
- (C) *Plans.* The Ordinance shall also direct the City Manager to have detailed plans and specifications of the local improvement prepared and that, when appropriate, the City invite bids for construction of the local improvement. All bidders shall be required to submit a certified check or bid bond in an amount equal to five (5%) percent of their bid, and the contractor to whom the award is made shall submit a performance bond in the amount of his bid at the time the contract is awarded. All bonds shall be with bonding companies doing business in Oregon and given under Oregon law. Bonds shall incorporate the term of the plans and specifications and must be approved by the City Attorney as to form. (*Ord. 832, 3-11-2003*)

**2.4.9 GENERAL POLICY/BIDS**

- (A) *General Policy.* It shall be the general policy of the City of Vale to call for bids for making local improvements and to award the bid to the lowest responsible bidder. However, this general policy shall not prohibit the Council from providing that the City construct the local improvements rather than private contractors.
- (B) *Separate Bids.* In the event that more than one local improvement district shall be advertised for bids at the same time all local improvement districts shall be bid separately.
- (C) *Low Bid.* The Council shall have the authority to accept the lowest responsive aggregate bid which is in the best interest of the City for all of the local improvement districts bid at the same time, and allocate the proper amount of the total cost to each district separately.
- (D) *Council Discretion.* The Council may reject any and all bids submitted. The Council shall not be required to accept any bid for any individual district even though the same may comply with the requirements hereof when the aggregate bid fails to meet the requirements of other local improvement districts then bid.

**2.4.10 ASSESSMENT ORDINANCE PROCEDURES**

- (A) *Initial Assessments.* If the City Council determines that the local improvement district shall be created the City Council shall provide for the assessment or estimated assessment of the benefitted properties, and for the apportionment of the assessment or estimated assessment to the individual lots within the local improvement district by ordinance by one of the following methods:
  - (1) Actual cost of the local improvement, or
  - (2) The estimated actual cost of the local improvement.
- (B) *Notice.* The Recorder shall prepare the assessment or estimated assessment to the respective lots within the assessment district and file it with the appropriate City office. Notice of such assessment or estimated assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of assessment or estimated assessment proposed on that property and shall fix a date by which time objections and the grounds for objections shall be filed with the Recorder. Any objection shall state the grounds thereof. The City Council shall consider such objections and may adopt, correct, modify or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments.
- (C) *Actual Cost.* In determining the assessments or estimated assessments for the local improvement the Council shall use the actual cost which means all direct or indirect costs incurred by City in order to deliver goods or services or to undertake a capital construction project. The "actual cost" of providing goods or services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost of making a good or service available to the property or property owner, whether stated as a minimum fixed or variable amount. "Actual cost" includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.

- (D) *Lien.* The assessment ordinance shall provide that the assessments or estimated assessments against the benefitted properties shall be a lien against the assessed properties and that the City may enforce collection of such assessments as provided by Oregon law.
- (E) *Estimated Cost.* If the initial assessment has been made on the basis of estimated actual cost, and upon the completion of work the cost is found to be greater or less than the estimated cost, the City Council shall make an assessment for the correct actual costs. Proposed assessments upon the respective lots within the assessment district for the proportionate share of the change shall be made; and notices shall be sent; opportunity for objection shall be given; such objections shall be considered; and determination of the assessment against each particular lot, block or parcel of land shall be made as in the case of the estimated assessment; and the assessment spread by ordinance.

#### **2.4.11 LIEN RECORDING; PAYMENTS OVER TIME OR BY CASH**

- (A) If the City has proceeded to cause any local improvement to be constructed or made within the corporate limits of the City, and has determined the final assessment for the local improvement against the property benefitted thereby or liable therefore, according to applicable law, the City shall cause notice of the final assessment to be published. The notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed and the final assessment for each lot. In addition, the notice shall state that the owner of any property to be assessed shall have the right to make application to the City for payment of the final assessment in installments as provided in this Ordinance. A copy of the notice shall be mailed or personally delivered to the owner of each lot to be assessed.
- (B) The owner of any property to be so assessed, at any time within ten (10) days after notice of final or estimated assessment is first published, may file with the recorder a written application to pay:
- (1) The whole of the final or estimated assessment in installments; or
  - (2) If part of the final or estimated assessment has been paid, the unpaid balance of the final assessment in installments.
- (C) At the option of the City, an installment application may be filed not more than ten (10) days after the notice of the final assessment is first published.
- (D) 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 costs of the local improvement.
- (E) The application shall provide that the applicant agrees to pay the final or estimated assessment over a period of not less than ten (10) years nor more than thirty (30) years and according to such terms as the City may provide. The City may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than ten (10) years and according to such terms as the City may provide.
- (F) The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the City on all unpaid assessments, together with an amount, determined by the City, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under Oregon Law (ORS 223.235), including but not limited to legal, printing and consultant's fees.
- (G) 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.

- (H) In connection with the final assessments for any local improvement, the City may establish a procedure by which an owner of any property to be assessed may irrevocably elect in writing to have the final or estimated assessment levied for a number of years less than ten (10), which shall be determined by the City. The written election shall:
  - (1) Be signed by the owner or a duly authorized representative of the owner;
  - (2) Contain a description of the assessed property and the local improvement for which the assessment is made; and
  - (3) Contain a statement by the owner acknowledging that the improvement is a local improvement as described in this Ordinance, that payment of the final assessment against the properties benefitted by the local improvement plus interest may be spread over at least ten (10) years and that, notwithstanding any provision of law, the owner consents to make payments over a period of less than ten (10) years and to have the assessment levied on the benefitted property accordingly.
  
- (I) The election 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.
  
- (J) When a bond lien docket is made up, as provided in Oregon Law (ORS 223.230), as to the final assessments for any local improvement, the City shall by ordinance or resolution authorize the issue of its bonds pursuant to the applicable provisions of Oregon Law (ORS Chapter 288).
  
- (K) The bonds authorized to be issued under this section shall be issued in an amount equal to the unpaid balance of all final assessments for the related local improvements including the amounts necessary to fund any debt service reserve and to pay any other financing costs associated with the bonds.
  
- (L) *Bonds.*
  - (1) If the question of the issuance of the specific bonds has been approved by the electors of the City and the bonds are issued as general obligation bonds, the City shall each year assess, levy and collect a tax on all taxable property within its boundaries. The amount of the tax shall be sufficient to pay all 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 City shall deduct from the total amount otherwise required the amount of final installment payments which are pledged to the payment of the bonds and which are due and payable in that year, and shall add to this net amount the amount of reasonably anticipated delinquencies in the payments of the installments or the taxes.
  - (2) The taxes shall 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 Oregon Law (ORS 310.060).
  - (3) The taxes shall become payable at the same time and be collected by the same officer who collects county taxes and shall be turned over to the City according to law.
  - (4) The county officer whose duty it is to extend the county levy shall extend the levy of the City in the same manner as City taxes are extended. Property shall be subject to sale for nonpayment of the taxes levied by the City in like manner and with like effect as in the case of county and state taxes.
  
- (M) If the question of the issuance of the specific bonds has not been approved by the electors of the City and the bonds are issued as limited tax obligation bonds, the City may, subject only to the limitations of Section 11 b (1), Article XI of the Oregon Constitution, calculate, assess,

levy and collect a tax on all taxable property within its boundaries in the manner provided in this Ordinance. The amount of such tax shall be sufficient to pay all principal of and interest on such bonds which is due and payable in that year and to replenish any debt service reserves required for such bonds, provided that if such bonds are issued as limited tax obligation bonds the amount of such tax shall not exceed the amount permitted under Section 11 b (1), Article XI of the Oregon Constitution.

(N) Security for Bonds.

- (1) All bonds issued pursuant to this section, including general obligation bonds, shall be secured by and be payable from the installments of final assessment with respect to which the bonds were issued.
- (2) In the ordinance or resolution authorizing the issuance of the bonds, the City may:
  - (a) Provide that installments of final assessments levied with respect to two (2) 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.
- (3) All bonds shall be secured by a lien on the installments of final assessments with respect to which they were issued. The lien shall be valid, binding and fully perfected from the date of issuance of the bonds. The installments of final assessments shall be immediately subject to the lien without the physical delivery thereof, the filing of any notice or any further act. The lien shall be valid, binding and fully perfected against all persons having claims of any kind against the City or the property assessed whether in tort, contract or otherwise, and irrespective of whether such persons have notice of the lien.

(O) As additional security for any bonds issued under this section, including general obligation bonds, the City may pledge or mortgage, or grant security interests in, its revenues, assets and properties, and otherwise secure and enter into covenants with respect to the bonds, as provided in Oregon Law.

(P) *Authority of City to Borrow.*

- (1) The City shall have the power, at any time and from time to time after the undertaking of a local improvement has been authorized, to borrow money and issue and sell notes for the purpose of providing interim financing for the actual costs of the local improvement.
- (2) Notes authorized under this subsection may be issued in a single series for the purpose of providing interim financing for two (2) or more local improvements.
- (3) Notes authorized under this subsection shall mature not later than one (1) year after the date upon which the City expects to issue bonds for the purpose of providing permanent financing with respect to installment payments of the final assessments for the local improvements.
- (4) 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.
- (5) The City may pledge the payment of bonds authorized to be issued under this section with respect to the local improvements for which the notes provide interim financing.

- (Q) The City may create, within the Bancroft Bond Redemption Fund maintained by the City as required by Oregon Law (ORS 223.285), separate accounts for separate issues of bonds or notes issued as provided in Oregon Law (ORS 223.235), and may pledge any amounts deposited in the separate accounts to specific issues of bonds or notes without pledging the amounts to any other issues of such bonds or notes.
- (R) The installments due and payable under an assessment contract shall be due and payable periodically as the City shall determine but shall not be due and payable over a term in excess of thirty (30) years. Each installment is due and payable with interest as described under subsection T of this section.
- (S) 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 Oregon Law (ORS 223.210).
- (T) The amount of each installment (percentage of the total final assessment) shall be determined by the City and shall be as appears by the bond lien docket described in Oregon Law (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 City under Oregon Law (ORS 223.215).
- (U) The first payment shall be due and payable on the date that the City shall determine, and subsequent payments shall be due and payable on subsequent periodic dates thereafter as shall have been determined by the City.
- (V) If the owner neglects or refuses to pay installments under Oregon Law (ORS 223.265) as they become due and payable for a period of one (1) year, then the City may, by reason of the neglect or refusal to pay the installments, and while the neglect and refusal to pay continues, pass a resolution:
- (1) Giving the name of the owner then in default in the payment of the sums due;
  - (2) Stating the sums due either principal or interest and any unpaid late payment penalties or charges;
  - (3) Containing a description of the property upon which the sums are owing;
  - (4) Declaring the whole sum, both principal and interest, due and payable at once.
- (W) The City 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.

#### **2.4.12 PARKING AND OTHER SPECIAL CITY IMPROVEMENTS**

The City may finance parking facilities by any one or any combination of the following methods:

- (A) 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.
- (B) Special or benefit assessments equal to the actual costs of the parking facilities, or a portion thereof, such assessment to be levied against property benefitted 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.

- (C) Parking fees, special charges or other revenue derived from the use of off-street parking facilities by motorists, lessees, concessionaires, commercial enterprises or others.
- (D) General fund appropriations.
- (E) State or federal grants or local aids.
- (F) Parking meter revenue.
- (G) General property taxes, or gift, bequest, devise, grant or otherwise.
- (H) 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 City 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.

### **2.4.13 ERRORS IN ASSESSMENT CALCULATIONS**

Claimed errors in the calculation of final assessments shall be called to the attention of the City Manager prior to any payment on account. The City Coordinator shall check the calculation and report his findings to the Council. If an error has been made the Council shall amend the final assessment ordinance to correct the error. Upon the enactment of such an amendment by the Council, the Recorder shall make the necessary correction in the lien docket and shall send by registered or certified mail to the owner a corrected notice of the assessment. (*Ord. 832, 3-11-2003*)

### **2.4.14 AUTHORITY OF CITY TO MAKE REASSESSMENT**

Whenever all or part of any assessment for improvements was or is declared void or set aside for any reason of 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 Council is in doubt as to the validity of all or part of any such assessment by reason of such defects in procedure, the Council may by ordinance make a new assessment or reassessment with respect to all or part of the original assessment upon the lots which have been benefitted by all or part of the improvement to the extent of their respective and proportionate shares of the full value of such benefit.

### **2.4.15 BASIS FOR, AMOUNT AND METHOD OF REASSESSMENT**

The reassessment shall be based upon the special and peculiar benefit of the improvement to the respective lots at the time of the original making of the improvement. The amount of the reassessment shall not be limited to the amount of the original assessment but the property embraced in the reassessment shall be limited to property embraced in the original assessment. However, property on which the original assessment was paid in full shall not be included in the reassessment. Interest from the date of delinquency of the original assessment may be added by the Council to the reassessment in cases where the property was included in the original assessment, but such interest shall not apply to any portion of the reassessment that exceeds the amount of the original assessment. The reassessment shall be made in an equitable manner as nearly as may be in accordance with the law in force at the time the improvement was made, but the Council may adopt a different plan of apportioning benefits or exclude portions of the district when in its judgement it is essential to secure an equitable assessment. Credit shall be allowed on the new assessment for all payments made on the original assessment.

### **2.4.16 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 improvement and original assessment or any previous reassessment, and although the proceedings of the Council or the acts of any officer, contractor or other person connected with the improvement or assessment may have been irregular or defective, whether such irregularity or defect was jurisdictional or otherwise. The reassessment shall not be made in case of any improvement wherein a remonstrance sufficient in law to defeat it has been duly filed prior to the making of the improvement.

### **2.4.17 COUNCIL RESOLUTION TO REASSESS**

The proceedings required by the charter or other law for making of the original 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 Council contemplates for the reassessment and directing the Recorder or other person to prepare a proposed reassessment upon the property included within the district. After passage of such resolution, the Recorder or other person shall prepare the proposed reassessment and file it in the office of the Recorder.

### **2.4.18 PUBLICATION OF NOTICE OF REASSESSMENT; CONTENTS**

After the proposed reassessment is filed in the Recorder's office, the Recorder shall give notice thereof by not less than four (4) successive publications in a newspaper published in the City and, if there is no newspaper published in the City, in a newspaper to be designated by the Council. The notice shall show that the proposed reassessment is on file in the office of the Recorder, giving the date of the passage of the resolution authorizing it, the boundaries of the district or a statement of the property affected by the proposed reassessment, and specifying the time and place where the Council will hear and consider objections to the proposed reassessment by any parties aggrieved thereby.

### **2.4.19 PERSONAL NOTICE TO EACH OWNER; RIGHT TO FILE OBJECTIONS**

The Recorder shall, within five (5) 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, he shall mail the notice addressed to the owner or owner's agent at the city where such property is located. Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional or invalidate the reassessment proceedings. The owners of any property included in the description of the printed notice, or any person having an interest in that property, may, within ten (10) days from the day of last insertion of the printed notice, file in writing with the Recorder objections against the proposed reassessment.

### **2.4.20 HEARINGS ON OBJECTIONS; REVISION OF REASSESSMENT**

At the time and place appointed in the notice the Council shall hear and determine all objections filed under Section 19 of this Ordinance [Sec. 2.4.19]. The Council may adjourn the hearing from time to time, and correct, modify or revise the proposed reassessment or set it aside and order the making of a new proposed

reassessment. 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 Section 19 of this Ordinance [Sec. 2.4.19] 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 (2) successive insertions in a newspaper as provided in Section 18 of this Ordinance [Sec. 2.4.18], and the time when action may be taken thereon may be not less than five (5) 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 Sections 18 and 19 of this Ordinance [Sec. 2.4.18 and 2.4.19] and action taken thereon as provided in Section 19 [Sec. 2.4.19] and this section.

### **2.4.21 REASSESSMENT ORDINANCE**

When the Council has determined what in its judgment is a fair, just and reasonable reassessment, it shall pass an ordinance setting out and making the reassessment. The reassessment so made shall be deemed to be regular, correct, valid and just, except as it may be modified under Sections 22 and 23 of this Ordinance [Sec. 2.4.22 and 2.4.23].

### **2.4.22 LIEN DOCKET ENTRY; CREDITING PRIOR PAYMENTS**

When the reassessment is duly made it shall be entered in the City lien docket. All provisions for bonding and paying by installments shall be applicable, and such City liens shall be enforced and collected in the manner provided for collection of liens for an original improvement. All sums paid upon the former assessment or any previous reassessment shall be credited to the property on account of which it was paid and as of the date of payment.

### **2.4.23 RIGHT OF PURCHASER AT SALE UNDER PRIOR ASSESSMENT**

In cases where a sale was made under the original assessment or any previous reassessment, with reference to such improvement, and the property was not redeemed from the sale, the purchaser at the sale is subrogated to the rights of the City with reference to the property upon such reassessment if the purchaser waives all penalties and interest, except such interest as may be provided for 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, his heirs, executors, administrators, successors or assigns, shall execute a deed of resale and quitclaim of all right, title and interest in the property under such sale to 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, he shall return the certificate or other evidence of sale and the deed to the person delivering it to him. 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, his heirs, executors, administrators, successors or assigns fails to comply with this section, he is not entitled to subrogation. In any event, the amount of subrogation shall not exceed the amount which has been paid to the City on such sale, together with interest at the rate established under this Ordinance from the date of sale until the date of payment. This amount is to be paid by the City to the purchaser, his heirs, executors, administrators, successors or assigns if and when the City collects the amount of the reassessment against the property.

#### **2.4.24 REVIEW OF REASSESSMENT**

Notwithstanding any of the provisions of Sections 15 through 25 of this Ordinance [*Sec. 2.4.15 through 2.4.25*], owners of any property against which a reassessment for local improvements has been imposed may seek a review thereof under the provisions of Oregon law.

#### **2.4.25 ADDITIONAL REASSESSMENT PROCEDURE; TIME LIMITATION**

No proceedings for making a reassessment shall be instituted after twenty (20) years from the date when the first assessment was entered on the lien docket.

#### **2.4.26 MUNICIPAL BONDS ACCEPTED AS PAYMENT FOR ASSESSMENT LIENS**

General obligation bonds or interest coupons attached, or both, of the City are authorized for payment of all or any part of Local Improvement District liens, interest or penalties of or payable to the City.

#### **2.4.27 ASSESSMENT OF PUBLIC PROPERTY BENEFITTED BY IMPROVEMENTS**

- (A) Whenever all or any part of the cost of public improvements is to be assessed to the property benefitted thereby, benefitted property owned by the City, County, School Districts, State and any political subdivision thereof shall be assessed in the same as private property and the amount of the assessment shall be paid by the City, School Districts, County or State, as the case may be, provided that the costs of the improvements are, in any given case, of the type that may be bonded under this Ordinance.
- (B) In the case of property owned by the State, the amount of the assessment shall be certified by the City Treasurer and filed with the Executive Department as a claim for reference to the Legislative Assembly in the manner provided by Oregon law unless funds for the payment of the assessment have been otherwise provided by law.

#### **2.4.28 PUBLIC ROADS INCLUDED IN SIDEWALK IMPROVEMENT DISTRICT; ASSESSMENT ON PROPERTY BENEFITTED**

The 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 benefitted thereby, in the manner provided by the Oregon Constitution, Oregon Laws, City Charter and/or this Ordinance.

#### **2.4.29 ABANDONMENT OF PROCEEDINGS**

The Council shall have full power and authority to abandon and rescind proceedings for improvements undertaken hereunder at any time prior to the final consummation of such proceedings. If liens have been assessed upon any property under this procedure, they shall be canceled, and any payments made thereon shall be refunded to the payor, his assigns, or legal representatives.

### **2.4.30 CURATIVE PROVISION**

No improvement assessment shall be invalid by reason of a failure to give, in any report, on the proposed assessment, in the assessment ordinance, in the lien docket or elsewhere in the proceedings, the name of the owner of any lot or other parcel of land, or part thereof, or the name of any person having a lien upon or interest in such property, or by reason of any error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings hereinabove specified, unless it appears that the assessment as made, insofar as it affects the person complaining, is unfair and unjust, and the City Council shall have power and authority to remedy and correct all such matters by suitable actions and proceedings.

### **2.4.31 SPECIAL PROVISIONS FOR SANITARY AND STORM SEWERS**

When the Council finds that it is necessary for the public health, welfare and safety and the individual property owner(s) have failed to meet routine obligations of owners that a sanitary or storm sewer, or both, be constructed in an area within the City of Vale, the City shall, to the extent allowed by the Oregon Constitution and Oregon Laws, proceed to form an improvement district and construct the improvements as provided in this Ordinance whether or not such an improvement district has previously been rejected at any time by remonstrances. Property owners shall have no right of remonstrance. Those parts of this Ordinance which are in conflict with this section shall not apply.

### **2.4.32 APPORTIONMENT OF LOCAL IMPROVEMENT DISTRICT ASSESSMENTS**

The City shall apportion a Local Improvement District assessment imposed upon a single tract or parcel of real property among all the parcels formed from a subsequent partition or other division of that tract or parcel provided that the following conditions are met:

- (A) That the subsequent partition or division is in accordance with ORS 92.101 to ORS 92.160 and is consistent with all applicable comprehensive plans as acknowledged by the Land Conservation and Development Commission.
- (B) That the proportionate distribution of Local Improvement District assessment authorized may be made whenever the Local Improvement District assessment remains wholly or partially unpaid, and full payment or installment payment is not due.
- (C) That the City has been requested to make such Local Improvement District assessment by an owner, mortgagee, or lien holder 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 Local Improvement District assessment was originally levied.
  - (1) The City shall not apportion the Local Improvement District assessment unless the applicant files a true copy of the deed, mortgage or instrument evidencing the applicants ownership or other interest in the parcel, or
  - (2) The applicant supplies the City with the recording data necessary for the City to find such deed, mortgage or other instrument evidencing the applicant's ownership or other interest in the parcel in the Malheur County Deed Records.
- (D) Any and all Local Improvement District assessments made by the City pursuant to this Ordinance shall be in the form of an ordinance of the City of Vale and shall contain the following information at a minimum:
  - (1) The description of each parcel of real property affected by the apportionment.

- (2) The amount of the assessment levied against each parcel.
  - (3) The owner of each parcel.
  - (4) Such additional information as the City may require to keep a permanent and complete record of the assessments and the payments thereon.
- (E) A copy of the ordinance allowing a Local Improvement District assessment shall be filed with the City Recorder who shall make any necessary changes or entries in the City's lien docket.
- (F) When the Local Improvement District assessment is being paid in installments if the Local Improvement District assessment is apportioned among smaller parcels of real property under this provision, the installments remaining unpaid shall be prorated among those smaller parcels so that each parcel shall be charged with the percentage of the remaining installment payments equal to the percentage of the unpaid assessment charged to the parcel upon apportionment.
- (G) The City shall require each applicant to pay a deposit as established by the City before beginning the Local Improvement District assessment apportionment process and the City shall require all applicants to reimburse the City for the actual costs as defined in this Ordinance incurred by the City in apportioning Local Improvement District assessments under this provision.
- (H) The City's Public Works Director shall establish regulations for the equitable apportionment of Local Improvement District assessments pursuant to this Ordinance.

### **2.4.33 SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof. This Ordinance is intended to be as broad as allowed under Oregon Law and construction of the Ordinance or any portion should be made in favor of the policy of upholding local improvement districts. (*Ord. 760, 6-11-96, eff. 7-11-96, codified by Ord. 779, 8-26-97, eff. 9-26-97*)

# Chapter 5

## STREETS AND SIDEWALKS, MISCELLANEOUS PROVISIONS

### Sections

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### 2.5.1 VEHICLES FOR PHYSICALLY DISABLED PERSONS

Physically disabled persons who use motorized wheel chairs, golf carts or similar motorized vehicles are hereby authorized to drive the same upon the sidewalks and streets within the City, excluding State or County roads or highways. (*Ord. 618, 3-11-80*)

### 2.5.2 FEE FOR VACATION OF STREETS, ALLEYS AND PUBLIC PLACES

- (A) Whenever a petition is filed for the vacation of a public street, alley or other public place pursuant to the provisions of ORS 271.080 et seq., such petitioner shall pay a fee of three hundred dollars (\$300.00) to the City at the time of filing said petition, which fee shall not be refundable irrespective of the final determination of the City Council regarding such petition.
- (B) The City shall pay all costs of advertising from said fee, but the petitioner shall be responsible for all other costs and expenses incurred in such vacation procedure.
- (C) The petitioner shall prepare all documents necessary for said vacation proceedings, including, but not limited to, the proposed ordinance vacating the public street, alley or other public place. (*Ord. 651, 2-14-84*)

# Chapter 6

## TREE PLANTING, SIDEWALKS AND STREET RIGHT OF WAY; CITY ARBOR COMMITTEE

Sections

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### 2.6.1 DEFINITIONS

**APPLICABLE AREA:** 'A' Street within the City limits; Main Street from Harrison Street to Wadleigh Park.

**APPLICATION:** A document containing the applicant's name and address as well as the date and description including the size, growth rate and species of trees or shrubs proposed to be planted.

**APPROVED PLANTING AREA:** A thirty-six inch (36') square area recessed in the sidewalk from which the existing clay and soil has been removed to a depth of three feet (3') and replaced with a good quality top soil.

**QUALIFIED TREE:** A species of tree which is a small leaf, slow-growing or dwarf variety, capable of withstanding extreme temperature variations and infestation.

**RESPONSIBLE PARTY:** The tenant or owner occupying the closest building, or in the event the closest building is vacant, the owner of record, as recorded in the Malheur County Assessor's records.

**SITE PLAN:** A detailed sketch, drawn to scale, identifying the property lines, sidewalk, curb and street rights of way, store fronts, and existing trees and shrubs. The sketch shall also clearly identify any public facilities such as fire hydrants, signal devices, overhead utility lines, and underground water, sewage or utility lines. Additionally, the sketch should indicate the locations for proposed trees or shrubs. The sketch may show only those property lines which abut upon a public right of way and need not project the property in its entirety.

**SPECIES:** Raywood Ash, Bradford Pear, and Nonbearing Ornamental Plum.

### 2.6.2 PERMITS REQUIRED TO PLANT TREES; TREES PLANTED BY CITY

- (A) No trees, shrubs, bushes, or other woody vegetation shall hereafter be planted within City sidewalks or street rights of way in applicable areas without first securing a permit therefore from the City Manager. A permit may be requested by submitting an application with a site plan to the City Manager. Such permit shall be issued if the requested planting is of a qualified tree(s) and such planting conforms to the guidelines set forth in this Chapter and the City Tree Plan. However, preference shall be given to suggested species and the City Manager and/or the City Arbor Committee may make more specific recommendations for species to be planted in certain areas of the City.
- (B) Any person wishing to plant a tree, shrub, bush or other woody vegetation within a City sidewalk or street right of way in a applicable area which is not a qualified tree or does not conform to the requirements of this ordinance and the City Tree Plan may request a variance from said regulations from the Planning Commission, pursuant to section 8.10.1 through 8.10.5 of this code. Decisions of the Planning Commission may be appealed to the City Council pursuant to section 8.12.2 of this code.
- (C) An applicant may appeal an adverse decision of the City Manager by filing a written request for appeal within ten (10) working days after the application and/or site plan has been refused or modified. The City Council shall schedule a hearing date which shall be no more than thirty (30) days after said written appeal has been filed. The City Manager shall notify the applicant of the time, date and location of the hearing no less than ten (10) days prior to the hearing date. The applicant may appear in person or through a representative. The City Council shall notify the applicant of the decision in writing no more than ten (10) days after the hearing. Said writing shall state the decision and the basis upon which the decision was made.
- (D) The City shall have the right to plant, prune, maintain and remove trees, bushes, shrubs, or other woody vegetation within the sidewalks or street rights of way in applicable areas as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of the City. (*Ord. 832, 3-11-2003*)

### 2.6.3 LOCATION AND TYPE OF TREES

- (A) The City Council shall adopt a City Tree Plan specifying locations where trees may be planted within the sidewalk or street rights of way in the applicable area.
- (B) No person shall plant or maintain a tree within a sidewalk or street right of way in the applicable area which does not comply in all respects with this Chapter and with the City Tree Plan.
- (C) The City Council may, from time to time, amend or replace the City Tree Plan as it deems necessary.
- (D) No tree within a sidewalk or street right of way within the applicable area shall be planted any closer than thirty-six feet (36') from a street intersection or twenty feet (20') from an alley entrance as measured from the point of the nearest intersecting curbs or curb lines. No trees shall be planted closer than ten feet (10') from any fire hydrants.
- (E) No tree within a sidewalk or street right of way may be planted over any underground water line, sewer line, power transmission line or other utility.
- (F) All trees planted in the sidewalk or street right of way shall be planted in approved planting areas, and in locations specified in the City Tree Plan. Trees shall be planted in such a manner as to leave at least five feet (5') of unobstructed pedestrian walkway.

- (G) Trees, shrubs, bushes or other woody vegetation in aboveground containers at curbside are prohibited. Containers against building fronts will be considered acceptable when planted with small floral and/or shrubs, and maintained in a responsible manner. The City shall retain the right to remove such vegetation should it become apparent that said vegetation is not being properly maintained.

#### **2.6.4 TREE MAINTENANCE**

- (A) The responsible party shall provide the labor, equipment and pay all necessary expenses to plant or maintain the trees within the sidewalk or street right of way. Maintenance of the trees includes but is not limited to: consistent irrigation; routine pruning; treatment for infestation and disease; clean up and removal of dead leaves and branches; and removal and replacement of dead trees. When it is necessary to remove a dead tree, the responsible party shall replace the tree within one year from the date of removal. The City shall be responsible for removal and replacement of trees originally placed within a sidewalk or street right of way by the City.
- (B) Every responsible party of any tree within a sidewalk or street right of way shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection or traffic control device, and so that there shall be clear space of eight feet (8') above the surface of the street or sidewalk. Said owner shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to prune any tree or shrub in such street rights of way when it interferes with the proper spread of light along the street from a street light, or when it interferes with visibility of an traffic control device or sign. Failure of the responsible party to comply with an order of the City Manager to maintain or remove any tree shall after thirty (30) days' written notice be deemed a violation of this Chapter, and the City may then remove or trim such tree or shrub at an assessed cost against the property.
- (C) The City shall have the right to cause the removal or remedial treatment, if appropriate, of dead or diseased trees within the street right of way in applicable areas when such trees constitute a hazard to the public or harbor insects or disease which constitute a potential threat to other trees within the City. The City Manager will notify the responsible party of such trees in writing and will order such removal or remedial treatment. Failure of the responsible party to comply with an order of the City Manager after thirty (30) days' written notice shall be deemed a violation of this Chapter, and the City may then remove, trim or cause remedial treatment of such trees or shrubs at an assessed cost against the property.
- (D) It shall be unlawful for any person to prevent, delay or interfere with the City or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any trees within a sidewalk or street right of way. (*Ord. 832, 3-11-2003*)

#### **2.6.5 ABUSE OR MUTILATION OF TREES**

It shall be a violation of this Chapter to abuse, destroy or mutilate any tree, shrub, bush or other woody vegetation with the sidewalk or street right of way in the applicable area.

#### **2.6.6 CITY ARBOR COMMITTEE**

- (A) There is hereby created and established a City Arbor Committee for the City of Vale which shall consist of five (5) members, citizens and residents or business owners of this City, who shall be appointed by the Mayor with the approval of the Council.
- (B) The term of the five (5) persons to be appointed by the Mayor shall be three (3) years except that the term of two (2) of the members appointed to the first board shall be for only one (1) year

and the term of two (2) members of the first board shall be for two (2) years. In the event that a vacancy shall occur during the term of any member, that member's successor shall be appointed for the unexpired portion of the term. Members of the board shall serve without compensation.

- (C) It shall be the responsibility of the City Arbor Committee to study, investigate, counsel and develop and/or update annually a recommendation to the City Council for the care, preservation, pruning, planting, replanting, removal or other public areas.
- (D) The Committee shall make periodic recommendations to the City Council concerning the adoption, amendment and implementation of the City Tree Plan.
- (E) The Committee, when requested by the City Council, shall consider, investigate, make findings, report and make recommendations upon any special matters or questions coming within the scope of its work.
- (F) The City Arbor Committee shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

### **2.6.7 PENALTY**

Any person violating any provision of this Chapter shall be, upon conviction or plea of guilty, subject to a fine not to exceed five hundred dollars (\$500.00). (*Ord. 726, 4-26-94*)