

TITLE 4

PUBLIC IMPROVEMENTS

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TITLE 4

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Chapter 4.01

4.01 RELOCATION PROCEDURE

4.01.010 Policy and Purpose

- A. The purpose of this chapter is to establish a procedure for hearing appeals of persons who have been or will be displaced from real property by the construction of public improvements. State and Federal laws require relocation assistance to such displaced persons. State and Federal laws also require the County to establish a procedure for hearing appeals by displaced persons regarding relocation assistance eligibility decisions.
- B. Any aggrieved person may appeal the County's or Development Agency's determination in accordance with the procedures set forth in this chapter. These procedures effectuate the County's policy that:
 - 1. Each person who appeals has the opportunity for oral presentation;
 - 2. Each appeal will be decided promptly and the applicant will be informed of the decision in writing; and
 - 3. Each appeal decision will include a statement of the reasons upon which it is based. [Codified by Ord. 05-2000, 7/13/00]

4.01.020 Definitions

- A. AGGRIEVED PERSON means a person who does not agree with a determination of Clackamas County or the Clackamas County Development Agency ("Development Agency") regarding eligibility for relocation assistance or the amount of relocation assistance benefits.
 - B. DISPLACED PERSON means any person who:
 - 1. Is in occupancy at the initiation of negotiations for the acquisition of the real property or other real property on which the person conducts a business or farm operation, in whole or in part, or is in occupancy at the time the person is given a written notice by the County, Development Agency, or their agents or representatives that it is their intent to acquire the property by a given date; and
 - 2. Moves from the real property or moves the person's personal property from the real property or other real property on which the person conducts a business or farm operation subsequent to the earliest date established above; and the real property is subsequently acquired, or if the move occurs after a written order to vacate is issued, the occupant is eligible even though the property is not acquired.
 - C. NOTICE OF BENEFIT means a notice received by a person from the County, the Development Agency, or their agents or representatives, setting forth or denying the right to, or amount of, benefits to be awarded pursuant to the Relocation Assistance Act of Oregon (ORS 281.045 to 281.105) and Federal Uniform
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Relocation Assistance and Real Property Acquisition Policies Act of 1970. Said Notice shall state that any person aggrieved by the determination shall have the right to appeal that determination in accordance with this chapter.

- D. PERSON means an individual, partnership, company, association, corporation, or any other legal entity, including any receiver, trustees, assignee or similar representative.
- E. PETITIONER means a person who files with the County a timely petition for reconsideration of the Hearing Officer's order. [Codified by Ord. 05-2000, 7/13/00]

4.01.030 Hearing Officer

- A. There is hereby created the position of Relocation Assistance Hearing Officer.
- B. The Board of County Commissioners of Clackamas County shall appoint this person.
- C. The Hearing Officer shall have the following powers and duties:
 - 1. To hear and determine appeals under the procedure set forth in this chapter; and,
 - 2. To exercise such other powers and perform such other duties that may be necessary to achieve the policies and purposes of this chapter. [Codified by Ord. 05-2000, 7/13/00]

4.01.040 Appeal Procedure

- A. An aggrieved person may file a request for an appeal hearing within 60 days after the County, the Development Agency, or its representative mails a notice of benefit to the aggrieved person.
- B. The request for an appeal hearing and all other communications with the County, Development Agency, or Hearing Officer shall be in writing and shall be directed to the following person:

Director
Department of Transportation and Development
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

- C. Hearing shall be held on all requests postmarked no later than 12:00 a.m. of the 60th day following the mailing date of the notice of benefit. The hearing procedures shall be in substantial compliance with ORS Chapter 183 procedures and rules for contested cases.
 - D. When a person files a request for a hearing, an informal conference shall be scheduled for a date no later than 30 days after the request is received. Said conference shall be between the aggrieved person and the project manager for the construction project involved. The aggrieved person may make an oral presentation and supply the project manager with any information the aggrieved person deems relevant.
 - E. Within 10 days after the informal conference, the project manager shall mail to the aggrieved person written notice of the results of the conference, including a statement of the reasons upon which the project manager's decision is based. An
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- aggrieved person, who does not agree with the project manager's decision, may so notify the County in writing within 10 days after the date of the decision is mailed. The County shall then schedule a date for a hearing before the Hearing Officer that shall be within 21 days after the County receives the aggrieved person's written notification that the project manager's decision is not acceptable.
- F. The County shall send written notice of the time and place for the hearing to the aggrieved person, the project manager, and the Hearing Officer within 15 days before the hearing date. Notice to the aggrieved person shall be by both certified mail, return receipt requested, and by first class mail; all other notices may be by any means reasonably calculated to give actual notice. Notice may also be given to such other persons as the project manager or Hearing Officer determine to be interested persons.
 - G. The aggrieved person and the project manager or their representatives may make argument and submit evidence in accordance with ORS Chapter 183 procedures and rules for contested cases.
 - H. All hearings shall be recorded in a manner that will allow for written transcription to be made. The Hearing Officer shall retain all materials submitted at the hearing for three years.
 - I. Within 15 days after the hearing, the Hearing Officer shall issue and mail to the aggrieved person either a copy of his or her order or a notice of any continuance of his or her decision, not to exceed 15 days.
 - J. Failure of an aggrieved person to appear at either the informal conference or at the hearing shall constitute a waiver of the right to a hearing. [Codified by Ord. 05-2000, 7/13/00]

4.01.050 Reconsideration; Judicial Review

- A. The Hearing Officer may reconsider an order upon the filing of a written petition for reconsideration with the County by the aggrieved person. A petition for reconsideration must be filed within 15 days after issuance and mailing of the order.
 - B. The County shall promptly notify the Hearing Officer in writing that a petition for reconsideration has been filed. If the Hearing Officer takes no action within 15 days after notice is sent to him or her, the petition shall be deemed denied and the order shall be deemed final. If the Hearing Officer allows the petition, a reconsideration hearing shall be held scheduled for a date within 21 days after the petition is filed. The County shall give the petitioner and all parties to the original hearing written notice of the time and place of the reconsideration hearing. Notice to the petitioner shall be by both certified mail, return receipt requested, and first class mail; all other notices shall be by first class mail.
 - C. The petitioner or his or her representative may make an oral presentation at the hearing. The Hearing Officer shall have the discretion to allow new evidence.
 - D. Within 15 days after the reconsideration hearing, the Hearing Officer shall issue a new order that shall include a statement of the reasons upon which the new order is based.
 - E. Judicial review of the Hearing Officer's action shall be taken in the manner set forth in ORS 183.480-183.497. [Codified by Ord. 05-2000, 7/13/00]
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Chapter 4.02

4.02 LOCAL IMPROVEMENT DISTRICT FORMATION, FINANCING AND COLLECTION

4.02.010 Purpose

- A. The purpose of this chapter is to establish procedures and guidelines for the formation and financing of Local Improvement Districts relating to construction of public roads, sidewalks, and related facilities and for the foreclosure of liens on properties within said Local Improvement Districts (“LIDs”) or other collection action as may be necessary when payments are delinquent.
- B. Local Improvement Districts are formed under ORS 371.615. It is the purpose of this chapter to articulate the minimum criteria for the formation and financing of LIDs so that potential property owners, the County, and all interested parties have a clear understanding of the requirements at the outset of any formation process, and to allow the County to assure an economically viable and efficient method for financing. Further, it is the purpose of this chapter to set forth the policy on enforcement and collection of payments of delinquent liens with LIDs as well as the creation of a surplus debt fund. [Codified by Ord. 05-2000, 7/13/00]

4.02.020 Formation and Financing.

- A. Persons wishing to initiate formation of a Local Improvement District shall meet with staff to review and obtain explanation of the County’s process including the requirements of statute, this chapter and the Policies and Procedures Manual. At this meeting, staff and the potential applicant(s) shall review the financial criteria of the chapter and the Policies and Procedures Manual to determine at the outset if the petition is feasible. The potential applicant(s) shall then obtain petition forms, and at their own cost and expense obtain the necessary signatures and otherwise meet all requirements. No action by County staff in reviewing the proposed Local Improvement District shall be binding; only the Board of County Commissioners may evaluate and make the final decision regarding formation of the Local Improvement District and financing thereof.
 - B. For all projects except sidewalk construction, the petition shall comply with requirements of ORS 371.615 and 371.620. For sidewalk construction projects, the petition shall comply with ORS 371.620 and shall contain the signatures of not less than 60% of the owners of benefited land who represent not less than 50% of the land abutting or fronting on the proposed sidewalk construction. The petition shall indicate where the improvement shall be made and describe the
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- nature of the improvement desired.
- C. In addition to the requirement of ORS 371.615, et seq., the resolution initiating the formation shall, at a minimum: (i) set forth where the improvement shall be made; (ii) describe the nature of the improvement desired; (iii) direct the Director of the Department of Transportation and Development to investigate the proposed improvement, if feasible, provide plans, estimated costs, a recommended method of assessment, descriptions of properties benefited, the real market value of properties involved, and names of the owners; and (iv) direct the Finance Director to evaluate the proposed District according to financing criteria and furnish financing recommendations for timely repayment of project debt. All costs for the construction for any of the improvements described in Section 4.02.010 shall be allocated to the benefited properties in the manner set forth in ORS 371.605 to 371.660. To the extent that ORS 371.615, ORS 371.630 and ORS 373.642 contradict this chapter, this chapter pursuant to ORS 371.610(3) supersedes those provisions.
- D. For all projects except sidewalk construction, the number of written objections required to declare the project abandoned should comply with ORS 371.630(2). For sidewalk construction projects, the number of written objections required for the County Commissioners to declare the project abandoned shall be more than 50% of the owners of benefited land or more than 50% of the owners of land abutting or fronting the proposed sidewalk construction.
- E. The staff's report, pursuant to ORS 371.625, shall set forth financial criteria designed to evaluate the fiscal viability of a proposed Local Improvement District and contain the recommendation of the Finance Director. The criteria are designed to evaluate and minimize the County's risk of having to expend General Fund or additional tax levy monies to cover defaults or delinquencies on assessment contracts. Each project shall meet the following criteria for financing:
1. No less than ninety percent (90%) of the number of benefited properties must have a ratio of real market value to assessment of at least 3 to 1. Real market value shall be net of any parity tax liens outstanding on the property;
 2. The remaining ten percent (10%) of the properties excepted from the requirements of 4.02.020 E 1 above shall have a real market value to assessment ratio of at least 1.5 to 1. Within this category, no single property may represent more than two percent (2%) of value of the total assessment; and,
 3. Assessment financing shall not be available for projects in which three or fewer property owners own more than fifty percent (50%) of properties comprising the total real market value for the entire district, except when those assessments are secured by an additional performance guaranty such as a bank letter of credit, by enhanced real market value to assessment ratios, or by other guaranties that appropriately protect the County's interest, in the sole discretion of the Finance Director.
- F. Notwithstanding the foregoing, the Finance Director may recommend that a project not meeting the criteria of 4.02.020 E be approved. Considering the nature of the improvement, the dollar size of the project and other equitable factors, it is reasonable to proceed in the public interest, and the County chooses to finance the
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- project on its own or use an alternative method of financing with a third party.
- G. The County hereby declares its intention to assess the actual cost of the project as that term is defined in ORS 310.140(13) (“costs”). Pursuant to Section 1.103-18 of the United States Treasury Department Income Tax Regulations, to reimburse expenditures for the costs of the improvements described in the resolution approving proceeding with the project, approving the staff report, and forming the District, by issuing warrants, notes, bonds or other obligations. Interim financing obligations will be in a principal amount, which does not exceed the costs of the improvements and related costs of administration and financing, less any funds that are available to provide internal financing. Long term financing will be an amount equal to the cost of the improvements and related costs of administration and financing, fewer amounts paid by benefited property owners prior to the issuance of these obligations. The total cost of the improvements and related costs of administration and financing as defined in ORS 310.140(13) shall be estimated in the resolution as the highest possible cost of the project.
- H. Upon formation of the District and levy of assessments each assessment levied must be paid in full or proper application must be made under ORS 223.210 to pay any assessments according to the installment payment method on forms approved by the County. Assessments shall be paid in semi-annual installments of fully amortized principal payments plus interest thereon at the rate stated in the assessment contract or as adjusted by the interest rates and other costs associated with a subsequent bond sale wherein the assessment contract is pledged as security. Therefore, if bonds are sold relating to the subject assessment contract the interest rate shall be adjusted as of the date of the bond sale and the varying amounts due by reason of the proration shall be set forth on the next succeeding semi annual payment notice.
- I. The County finds that a proposed project where a significant number of assessments are less than \$2,500 may be difficult administratively to administer and the County, in its sole discretion, may determine not to proceed with the project based upon the Finance Director’s analysis under 4.02.020 C (iv). In such instances the project may be approved if the property owners having assessments of \$2,500 or less, elect in writing to pay the assessments according to the following schedule:
1. For assessments in the amount of \$100 or less, the amount shall be paid in full within sixty (60) days following entry on the Street Lien Docket;
 2. For assessments from \$100.01 up to and including \$1,000, payment shall be made in semi-annual installments including interest thereon over a period of three (3) years; and
 3. For assessments from \$1,000.01 up to and including \$2,500, payment shall be made in semi-annual installments including interest thereon over a period of five (5) years;
- J. The written election shall
1. Be signed by the owner or 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
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3. State that the owner acknowledges that the improvement is a local improvement as described under ORS 223.001(9). That payment of the final assessment, against the properties benefited by the local improvement plus the interest may be spread over at least ten years; that notwithstanding any provision of law, the owner consents to make payments over a period of less than ten years and have the assessment levied accordingly on the benefited property. The written election shall be recorded and valid and binding upon all heirs, successors and assigns of the owner.
- K. The interest rate set forth in the assessment contract shall be based upon the current commercial prime interest rate charged by the bank having the largest deposits within the State of Oregon as of the date of the assessment, bond market interest rates, and such other indicators as the Finance Director deems appropriate at the time the assessment is levied. The County must be protected from funding cash flow shortfalls produced from default or delinquent payment associated with non-performing assessment contracts. Unless otherwise amended by order, or within the formation resolution or assessment contract, the County shall add 50 basis points for administrative costs and 50 basis points for historically anticipated risks (total of 1%) to the assessment contract interest rate. Nothing shall prevent adjustment of either component described above by resolution or order. [Codified by Ord. 05-2000, 7/13/00]

4.02.030 Delinquent Accounts.

- A. Upon formation of a Local Improvement District, persons or entities who elect and qualify to pay on an installment or other deferred basis, must do so in a timely fashion, but there has been, and is anticipated, a certain percentage of persons or entities who make partial and/or late payments, as well as those who default entirely. The County has previously adopted and followed a collection policy consistent with State law. With the passage of Article XI, Section 11(b) of the Oregon Constitution, the County finds that it must adopt by ordinance the most proper and efficient method possible to assure its financiers and citizens of implementation of proper fiscal management practices. Nothing herein shall prevent more stringent practices as deemed necessary by debt instruments executed by the County in favor of third parties.
 - B. Aggressive collection shall be taken for all unpaid debt. The Finance Director will be notified immediately by the Collection Department of any account thirty- (30) days or more past due. The Finance Director shall then send a letter to the defaulting party demanding payment no later than thirty (30) days following the date of the demand letter. The demand shall require payment of all amounts to bring the account current including any applicable interest or other penalty and shall demand full compliance with a time-be-of-the-essence clause according to the type of obligation at issue. The time for payment to bring the account current shall be left to the best professional judgment of the Finance Director, depending upon the type of debt and amount owed. However, in no event shall time for payment exceed the next payment due date, or any other requirements imposed by debt instruments executed by the County in favor of any third party, or other
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- agreements that may have been executed by the County.
- C. If payment has not been made following the first notice, the Finance Director shall send a second notice detailing the prior defaults and notices thereof, indicating that further action, including legal action, will be taken.
 - D. If, following the second notice, time for payment has expired, then the Finance Director shall include the defaulting person or entity on a list entitled "Collection/Foreclosure" and consult with appropriate staff and legal counsel regarding the most efficient and cost effective method for collection of the debt.
 - E. The Finance Director shall determine if the matter will be referred to legal counsel, a debt collection agency or other method for collection. If referred to legal counsel, a demand letter to the debtor shall be sent declaring default, accelerating the entire balance and requiring full payment within a reasonable period of time, not to exceed thirty (30) days. If no satisfactory response is forthcoming, the Finance Director may direct counsel to commence legal action. The Finance Director may extend the time limits for legal action in cases of extraordinary hardship. Such determination shall be at the sole discretion of the Finance Director and not subject to review by the Board of County Commissioners.
 - F. Upon referral and direction by the Finance Director, counsel may proceed with foreclosure of the assessment lien or take other legal action authorized by law, which is deemed most appropriate under the circumstances.
 - G. If the Finance Director determines that it is most effective to use the services of a collection agency, the Finance Director may solicit proposals and make a recommendation to the Board of County Commissioners regarding selection of a firm consistent with the Clackamas County Local Contract Review Board Rules and ORS Chapter 279. The Finance Director shall be authorized to negotiate a contract regarding the amount of compensation, length of term and methods of collection, subject to final review and approval by the Board. However, the contract shall specifically provide that the collection agency shall fully comply with the Fair Debt Collection Practices Act, 15 U.S.C. 1601, et seq., and shall provide for full indemnification and protection of the County from any and all claims for unfair, or unlawful, debt collection practices. [Codified by Ord. 05-2000, 7/13/00]

4.02.040 Reserve Fund.

Any surplus of funds remaining after the last maturity of any present or future Local Improvement District bond or financing issue shall be transferred to the reserve fund for Local Improvement Districts to meet assessment shortfalls. [Codified by Ord. 05-2000, 7/13/00]

4.02.050 Policies and Procedures Manual.

The Board hereby authorizes the Clackamas County Finance Director to adopt a Policies and Procedures Manual consistent with, and to implement, this chapter. In addition to any statute or ordinance requirements hereunder, the terms and conditions of the Policy and

Procedures Manual shall apply to any proceeding under this chapter, as long as said terms and conditions are consistent with, and carry out, the intent of this chapter. [Codified by Ord. 05-2000, 7/13/00]

Chapter 4.03

4.03 ZONE OF BENEFIT RECOVERY CHARGES

4.03.010 Authority, Scope and Purpose

This chapter provides an optional partial reimbursement mechanism for persons or entities that build necessary road improvements. Under this chapter, when a developer builds necessary road improvements likely to benefit other nearby properties, the developer may request that the County determine the degree of benefit and, if appropriate, require the nearby owner(s) to reimburse a portion of the improvement costs at the time they develop their property. The properties that benefit from the road improvement are known as the Zone of Benefit, and the partial reimbursement charge is called the Recovery Charge.

- A. ORS 368.016 specifies that the exercise of governmental powers relating to a road within a county is a matter of county concern. ORS 203.035(1) provides that counties may, by ordinance, exercise authority within the county to the end that counties have all powers over matters of county concern, to the fullest extent allowed by the Constitutions and laws of the United States and of this state.
 - B. Clackamas County generally constructs, or requires property owners to construct and install, necessary road improvements as a condition of development approval. If property owners accomplish these improvements, they are generally constructed in accordance with County design and construction standards and later dedicated to the County as public improvements. Many of these road improvements, particularly those constructed off-site, can and will be used in the future by other nearby property owners who develop or otherwise change the use of their property in a manner which creates an increased impact on road facilities. Therefore, these improvements represent a potential benefit to nearby property owners.
 - C. This chapter is intended to provide a uniform mechanism whereby, if either the County initiates, or property owners install, necessary road improvements which specially benefit other nearby property owners, a request may be directed to the County to formally assess the degree of benefit. If appropriate, the County may require the owner(s) of such benefited property to contribute a portion of the cost of the road improvements, if the latter owner changes the use of, or otherwise develops, their property in a manner that increases the impact on road facilities.
 - D. This chapter provides a mechanism whereby property that has been benefited by the construction of certain improvements by another person or the County, will share in the cost of those improvements through payment of a Zone of Benefit Recovery Charge to the County at the time the benefited property is approved for development and before a permit for development is granted. This chapter also provides a mechanism for the County to examine the improvements which are
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- constructed, their cost, the properties which are specially benefited by them, and a reasonable method of apportioning the recoverable costs among benefited properties. Property owners whose property would be subject to the Recovery Charge fee will be provided an opportunity to review and comment on pertinent information prior to the County establishing a Zone of Benefit Recovery Charge pursuant to this chapter. The County will endeavor to collect Recovery Charges and upon receipt, will forward the appropriate portion of such funds (less a fee of up to 5% for administration, as established by Board resolution) to the requester who financed and/or caused the improvements to be constructed.
- E. The process which is used to establish a Zone of Benefit Recovery Charge under this chapter, also offers property owners who would be required to pay a future recovery charge for such improvements, an opportunity to examine and comment on the proposal at a public hearing. improvements. The decision by the Board to establish a Zone of Benefit Recovery Charge in a given case is not intended to be a land use decision. Rather, it recognizes the private benefit that has been conferred by a property owner, or the County, on neighboring property and provides a way of sharing those costs.
- F. Except as may be provided in this or other County chapters, Zone of Benefit Recovery Charges are in addition to other charges which may be required of development, such as system development charges, inspection fees, building permit fees, other improvement-related fees and taxes. The Zone of Benefit Recovery Charges established under this chapter represents a cost associated with development, which is specifically related to the benefit derived by new development and the advance costs of providing that benefit.
- G. Zone of Benefit Recovery Charges established under this chapter are not assessments against property, and do not become due and payable, unless and until such time as the subject property is approved for development that increases, or is likely to increase, the impact on road facilities.
- H. The Zone of Benefit Recovery Charges established herein, are intended to be charged upon approval of the act of development that increases, or is likely to increase, the impact on road facilities. Such charges are fees for service because they contemplate a development's receipt of essential services based upon the nature of that development. The timing and extent of any development are within the control and discretion of the property owner. Furthermore, the Recovery Charges imposed by this chapter are not intended to be a tax on property, or on a property owner, as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution, or the legislation implementing that section.
- I. The Zone of Benefit Recovery Charges established under this chapter provide a method for more specifically adjusting the improvement requirements imposed on a property owner according to the benefit received by new development. This also serves the purpose of providing reasonable compensation to the requester who finances or causes to be constructed the beneficial road improvements, and thus assists in avoiding disputes over property rights.
- J. The Zone of Benefit Recovery Charges established, and the process described in this chapter, may be reviewed and modified as needed to comply with future
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- amendments to the Clackamas County Comprehensive Plan and/or the Clackamas County Zoning and Development Ordinance.
- K. While Clackamas County may require a person to construct and install necessary road improvements as a condition of development approval, a request to establish a Zone of Benefit Recovery Charge as authorized by this chapter is voluntary, and cannot be made a condition of development approval.
 - L. This chapter shall apply throughout Unincorporated Clackamas County. [Codified by Ord. 05-2000, 7/13/00]

4.03.020 Definitions

All terms not defined below shall be as defined in the Clackamas County Zoning and Development Ordinance.

- A. ADMINISTRATOR means the person appointed by the Board of County Commissioners to implement and manage the administration of this chapter.
 - B. ANNUAL PERCENTAGE RATE MULTIPLIER means the factor applied to the Zone of Benefit Recovery Charge at the time it is paid to account for the time value of money and provide the requester with a fair return on investment for the road improvements included in an approved Zone of Benefit.
 - C. BANCROFT BOND means that a bond is issued by the County to finance a capital improvement in accordance with ORS 223.205 - 223.295.
 - D. BOARD means Board of County Commissioners of Clackamas County, Oregon.
 - E. BUILDING OFFICIAL means that person, or designee, certified by the State and designated as such.
 - F. BUILDING PERMIT means that permit issued by the Building Official pursuant to the State of Oregon Structural Specialty Ordinance Section 301, or as amended, and the State of Oregon One and Two Family Dwelling Chapter section R-109, or as amended. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the County Building Official relating to the placement of manufactured homes in the County.
 - G. COUNTY means Clackamas County, Oregon.
 - H. DEVELOPMENT means any change in the use or appearance of improved or unimproved real property, that increases, or is likely to increase, the impact on road facilities, and requires a County permit, including, but not limited to:
 - 1. Construction, installation or change of a building or other structure;
 - 2. Land division;
 - 3. Establishment or termination of a right of access;
 - 4. Storage on the land; or
 - 5. Construction of additional parking.
 - I. FINANCE DIRECTOR means that person or designee assigned by the Board of County Commissioners the responsibility of managing the Finance Department for Clackamas County.
 - J. PARCEL OF LAND or PARCEL means a lot, parcel, block or other tract of land that is occupied, or may be occupied, by a structure, or structures, or other legal use, and that includes the yards and other spaces required by County Ordinance or regulations.
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- K. PERSON means a natural person, such person's heirs, executors, administrators or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent, employee or any representative. For purposes of this chapter, Clackamas County also qualifies as "a person".
- L. PROPERTY OWNER means the owner of the title to real property, or the contract purchaser of real property of record, as shown on the last available complete assessment roll in the office of the County Assessor.
- M. REQUESTER means the person who finances or causes construction of road improvements, such that property(ies) upon its development will, or may be, relieved of the obligation or requirement, to construct all or a portion of the same improvements, and who requests that the County establish a Zone of Benefit Recovery Charge. The County itself may be a requester.
- N. ROAD IMPROVEMENT means all road related construction within a public right-of-way, which is designed and constructed in accordance with the County zoning, development ordinance, comprehensive plan, and design and construction standards which includes, but is not limited, to some or all of the following: extension, widening, bridges, storm drains, curbs, gutters, sidewalks and pedestrian safety devices, bike paths, traffic signals and other traffic control devices, street trees, sound walls, lighting, signage, and acquisition of right-of-way and necessary easements.
- O. SPECIAL BENEFIT means the value associated with a road improvement, which relates to a particular parcel of land to the extent such parcel is partially relieved of a cost or expense associated with development, and is different in degree from the value or benefit received by the general public.
- P. TRANSPORTATION CAPITAL IMPROVEMENT PLAN means the County program that identifies all of the major transportation system capacity, safety, reconstruction, and bridge improvements projected to be necessary to accommodate existing and anticipated transportation system demands. The document detailing this program is entitled "Clackamas County Transportation Capital Improvement Plan and Program".
- Q. ZONE OF BENEFIT means the area or parcels of real property, which are determined by the Board of County Commissioners to derive a special benefit from the design and construction of a road improvement, financed or constructed by a person or the County, without the formation of a local improvement district. For such improvements being installed, the owner(s) of the benefited property(ies) would be required to construct all or a portion of such improvements in connection with the development of such property(ies).
- R. ZONE OF BENEFIT RECOVERY CHARGE or RECOVERY CHARGE means the fee required to be paid by a property owner within a previously delineated Zone of Benefit, determined by the Board of County Commissioners to be the amount which is necessary or appropriate to reimburse another person or the County for financing or causing the construction of road improvements.

[Codified by Ord. 05-2000, 7/13/00]

4.03.030 Formation of a Zone of Benefit

- A. Any person who finances or causes construction of a road improvement which exceeds \$25,000 in cost, such that nearby property(ies) developed afterward will, or may be, relieved of the obligation or requirement to construct all or a portion of the same improvement, may request that the County establish a Zone of Benefit Recovery Charge .
 - B. A request to establish a Zone of Benefit Recovery Charges shall be in writing and shall consist of the following information:
 - 1. Detailed or as-built plans or drawings showing the actual location, nature and extent of all improvements for which a Zone of Benefit is sought;
 - 2. The parcels of property identified by survey or tax lot number which are purportedly specially benefited by the improvements and from which a Zone of Benefit Recovery Charge is sought;
 - 3. The ownership of parcels identified in paragraph 2 of this Subsection, according to the current records of the County Department of Assessment and Taxation, and the mailing address of such property owners;
 - 4. Detailed costs and invoices for labor, materials and actual permit and inspection fees devoted exclusively to the improvements and for which a Zone of Benefit Recovery Charge is sought to be established, and subject to the following limitations:
 - a. Costs shall not include any amount of “profit” or “overhead” of the requester.
 - b. Costs shall not include any amount of value, which is or may be attributable to the real property of the requester, which has been dedicated or transferred to the County for public use, such as right-of-way or easements.
 - c. The requester shall certify the accuracy of the costs, which are submitted to the County, and that the requester has actually paid or financed such costs.
 - d. The amount of any recovery charge attributable to road improvements may be based upon construction contract documents together with construction invoices or other appropriate information, provided by the requester.
 - e. The requester shall have the burden of establishing the cost of improvements.
 - f. Should the Administrator determine the contract amounts exceed prevailing market rates for a similar project, the Recovery Charges shall be based upon market rates.
 - 5. Other relevant information, as required by the Administrator shall be submitted; and
 - 6. A nonrefundable application fee, as established by the Board of County Commissioners by resolution, to cover the County’s costs in providing notice of public hearing and the Administrator’s examination and report, shall be paid at the time of application.
 - C. The Administrator shall review each application for the establishment of a Zone of Benefit Recovery Charge and prepare a report and recommendation to the
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Board of County Commissioners whether such a Zone of Benefit Charge should be established. The recommendation shall include and address the following factors:

1. Whether the requester has paid for some or all of the costs of a road improvement;
 2. The extent to which the improvements referred to in paragraph 1 of this Subsection have relieved another person or persons of the future need or requirement to construct all or a portion of the same improvements;
 3. The area, lots and/or parcels of land which are specially benefited by the improvement, and whether or not such parcels would, as a condition of future development, be required to construct some or a portion of the same improvement for which a Zone of Benefit Recovery Charge is sought to be established;
 4. That portion of the cost of the improvements within the area of the proposed or probable Zone of Benefit which may later become appropriate for recovery from the owners of property identified in Paragraph 3 of this Subsection;
 5. A rational formula for apportioning the cost of the improvement among properties within the proposed Zone of Benefit and an equitable cost allocation method, such as:
 - a. Front Foot method,
 - b. Zone Front Foot method,
 - c. Square Footage method,
 - d. Trip Generation (traffic) method, or
 - e. Other equitable method.
 6. The results of applying the formula referred to in paragraph 5 of this Subsection to the lots and/or parcels of land identified in paragraph 3 of this Subsection, which becomes the proposed Zone of Benefit Recovery Charge, subject to the limits described in 4.03.030 F;
 7. The annual percentage rate to be applied to the proposed recovery charge over the following fifteen (15) years, which represents the estimated annual return on investment of the recoverable costs.
 8. Whether the requester has complied with the requirements of this chapter.
- D. The Board of County Commissioners following a hearing pursuant to 4.03.040 of this chapter, shall determine the portion of the cost of the road improvement subject to recovery by properties within the zone of benefit.
- E. The amount of improvement costs that may be reimbursed to the person making such improvements through a Zone of Benefit Charge shall be limited as follows:
1. No recovery shall be made, or provided for, for the costs of that portion of the road improvement which specially benefits the requester's own property.
 2. No recovery shall be allowed for the cost or value of real property which the requester for recovery was required to dedicate or reserve for public use as a condition of development, unless such property was, prior to dedication or reservation, part of a separate parcel owned by another, where the cost of acquisition reflected an arms-length transaction, or where the amount of value received, represents the reasonable market value.
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3. Except as otherwise provided, recoverable costs and expenses shall be limited to the cost of road improvements, including the acquisition and condemnation costs of acquiring additional right-of-way and/or easements, the actual cost of permits, engineering and legal services as shown by invoice, and the estimated annual percentage increase in such costs over the fifteen (15) years following completion and approval of the road improvement.
 4. No recovery shall be allowed for road improvements which have been constructed by the requester, approved by the County and for which no application for Zone of Benefit Recovery Charge pursuant to this chapter has been received within six (6) months from the date of County approval of such improvements
 5. No recovery shall be allowed for that portion of a road improvement where the requester for Zone of Benefit Recovery Charge has received a credit against Transportation Systems Development Charges. If a Transportation System Development Charge credit is granted to a Recovery Zone requester for a portion of a project for which the requester has also made application for Zone of Benefit Recovery Charges, then the total amount of the request for Zone of Benefit Charges shall be reduced by the amount of the granted System Development Charge credits prior to determining the Zone of Benefit Recovery Charge for each affected property owner, including the requester. Property owners who are responsible for Zone of Benefit Recovery Charges may not receive Transportation Systems Development Charge credits for payment of the Zone of Benefit Recovery Charge.
 6. The obligation to pay a Zone of Benefit Charge shall not arise unless and until an owner of property within the Zone of Benefit applies for, or causes, or permits an application to be submitted and receives approval from the County for development activity involving the affected property.
 7. Unless the benefiting property owner agrees in writing, Zone of Benefit Charge shall not be imposed retroactively upon those benefiting properties that have been granted a development, or building permit, before an application for Zone of Benefit has been received.
 8. Reimbursement shall be allowed only for those expenditures and in amounts which the Board of County Commissioners determines are based upon improvement construction contract documents or other appropriate information provided by the requester, but not exceeding prevailing market rates for a similar project.
 9. Nothing contained herein shall be construed as requiring inclusion of County owned or controlled property within a Zone of Benefit or payment of a Zone of Benefit Recovery Charge unless, prior to County acquisition of such parcel, the Zone of Benefit had previously been established over such property. Except as otherwise specifically provided by the Board of County Commissioners, the obligation to pay a Zone of Benefit Charge shall not apply to that portion of a parcel which is dedicated or conveyed to the County for right-of-way or public utility purposes.
- F. Developments with reverse frontage or undeveloped tracts within the Zone of Benefit shall be subject to an access control restriction in the favor of the County,
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- set by a reserve strip of land on each side and parallel to the road improvement center line, being one foot wide, along the lot lines abutting the road improvement, across which there shall be no access. In each case where a dedication deed, subdivision, or partition plat establishes a new road improvement right-of-way in support of a Zone of Benefit Recovery Charge project, said dedication deed or plat shall additionally dedicate to the County a reserve strip for the purpose of withholding access from the adjacent property onto the road improvement until a proportional recovery charge is paid by the respective adjoining property owner. After the Zone of Benefit Recovery Charge is satisfied, or after fifteen years pass from the date of the Resolution creating the charge, whichever comes sooner, the County shall grant access and convert the reserve strip, or a portion thereof, to road right of way.
- G. The amount of the proposed Zone of Benefit Recovery Charge for each proposed lot and/or parcel to be included in the Zone of Benefits identified in Administrator's report shall not exceed 33 1/3% of the expected value of the land and improvements upon development or redevelopment. [Codified by Ord. 05-2000, 7/13/00]

4.03.040 Board Action on the Application

- A. After the Administrator's report on the Zone of Benefit application is complete, the matter shall be scheduled for hearing before the Board. The Administrator shall provide notice of such hearing on the application for establishment of a Zone of Benefit Recovery Charge by publication not less than ten (10) calendar days prior to the hearing, in a newspaper of general circulation within the County, and by mailing copies of the notice by certified mail (return receipt requested) not less than 20 calendar days prior to the hearing, to the owners of record of all lots and/or parcels which are proposed to be subject to the recovery charge. The notice shall contain at least the following information:
1. That an application for a Zone of Benefit Recovery Charge has been submitted to the County and the name of the requester;
 2. That the Administrator has prepared a report concerning such application, which report is available for public inspection by contacting the Administrator's Office;
 3. A general description of the improvement and the costs for which a Zone of Benefit Recovery Charge is sought;
 4. A general description of the improvement and the costs, or unit cost, for which a Zone of Benefit Recovery Charge will be recommended to the Board of County Commissioners;
 5. That the Board of County Commissioners will hold a hearing on the proposed recovery charge on a specified date at which time objections and comments regarding the proposed recovery charge will be heard by the Board; and
 6. That failure of the owner of property subject to such proposed recovery charge to object before the Board of County Commissioners either orally or in writing will be treated and relied upon by the Board as a waiver of objection to the Zone of Benefit Recovery Charge established by the Board.
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- B. For purposes of mailing notice to the parcel owner(s) of record under this Section, any mistake, error, omission, or failure with respect to such mailing shall not be jurisdictional or invalidate the proceedings with respect to the establishment of the recovery charge.
 - C. The Board of County Commissioners shall conduct a hearing at the time and place for which notice is given, or any continuance thereof, and shall consider the application, the Administrator's report, and any testimony and evidence presented concerning the application. The Board shall determine the following:
 - 1. Whether the properties against which a Recovery Charge is proposed to be established under this chapter are, or will be, specially benefited by the road improvement;
 - 2. Whether the costs for which a Zone of Benefit Recovery Charge is sought pursuant to this chapter are based upon improvement construction contract documents or other appropriate information provided by the requester and the extent, if any, to which such costs exceed prevailing market rates for a similar project;
 - 3. Whether the method of apportioning the costs to benefited properties is reasonably calculated to reflect the special and peculiar benefits each lot or parcel of land receives from the improvements; and
 - 4. Whether the annual percentage rate multiplier to be applied to the cost of construction reasonably reflects prevailing market rates.
 - D. After the hearing, the Board of County Commissioners may modify the proposed Zone of Benefit or Recovery Charge or both by adjusting the area, or the particular properties, from which recovery charges will be collected, by adjusting the amount of recoverable costs, by adjusting the formula used in apportioning recoverable costs or by adjusting the amount of the annual percentage rate by which the recovery charge will be increased. The Board shall make a tentative oral decision on the application, and thereafter adopt written findings in support of the decision.
 - E. If the Board determines that a Zone of Benefit Charge should be established, it shall do so by resolution, specifying the properties within the zone of benefit, the method of apportioning improvement costs among properties within the Zone of Benefit, and the annual percentage rate multiplier to be applied.
 - F. Following adoption of a resolution establishing a Zone of Benefit Recovery Charge pursuant to this chapter, the County Recorder shall provide public notice of the Zone of Benefit Recovery Charge applicable to those parcels as described in such resolution.
 - G. A copy of the resolution described in Subsection E of this Section shall be sent by certified mail (return receipt requested) to the owners of record of all property subject to the recovery charge established therein and to any other persons who have so requested a copy. Failure of the County to send the resolution to a person or property owner, or failure of a person or property owner to receive such resolution, shall not invalidate any proceeding in connection with the establishment of the recovery charge. [Codified by Ord. 05-2000, 7/13/00]
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4.03.050 Pre-Approval for Zone of Benefit

A requester may seek pre-approval for a Zone of Benefit prior to construction of the road improvement through the following process:

- A. The requester may submit a full application, defining the scope of work to be accomplished and projecting the total cost for recovery on an engineer's estimate for construction of the project.
- B. The process identified in Sections 4.03.030 and 4.03.040 will occur, but will incorporate these additional components:
 1. If the Board decides to establish the Zone of Benefit Recovery Charge, the oral decision and written resolution shall specify that the total projected Recovery Charge may not be exceeded.
 2. Until construction of the improvement is completed and approved by the County, the requester shall not receive any payment from a benefiting property owner.
 3. The requester shall submit monthly reports on the progress of the road improvement to the administrator. If, in the opinion of the administrator, the progress reports and field inspection of the improvement do not show significant progress without justifications for delay, the administrator shall make a recommendation to the Board that the Zone of Benefit be abandoned and benefiting properties be relieved of their obligation to pay the recovery charge. The County shall not refund any application fees paid by the requester. The County shall not be responsible for any costs of completing a project or making a project safe and secure should the Zone of Benefit be abandoned and/or the project not completed.
 4. After construction of the improvement is completed, the requester shall submit a final cost breakdown, with corroborating paid invoices to the County for review.
 5. Upon receiving the final cost breakdown and corroborating paid invoices, the County will determine whether there is more than a 5% difference between the total actual cost of construction of the improvement and the projected cost that was pre-approved under this Section.
 - a. If the projected cost that was pre-approved exceeds the total actual cost by more than 5%, the County shall reduce the recovery charge for each benefiting property by the same formula originally used for apportionment.
 - b. If the projected cost that was pre-approved exceeds the total actual cost by less than 5%, the County may choose to not reduce the recovery charge for each benefiting property and may choose to apply the difference to administrative costs otherwise chargeable to the requester as allowed in Section 4.03.060 D.
 6. If the requester's total actual costs exceed the projected Recovery Charge pre-approved by the Board by at least 5% and not less than \$25,000.00, the requester may apply for a supplemental Zone of Benefit Recovery Charge to qualify the additional costs by filing a new, complete application and paying a new, full application fee. The action taken on a supplemental Zone of Benefit Recovery Charge application will not be abbreviated in any way, and

the decision of the administrator and the Board shall not be influenced or affected by the fact that the projected cost was pre-approved.

7. If approved, the supplemental Recovery Charge shall be allocated to the benefiting properties using the same method that was used for the pre-approved projected amount, unless the Board finds good cause to deviate.
- C. If a benefiting property owner chooses to proceed with development of property before the requester's improvement is approved by the County, the benefiting property owner shall pay the County the pre-approved recovery charge, to be held by the County in escrow until the requester completes construction of the road improvement. Any benefiting property owner who utilizes this Subsection will be subject to the following conditions:
1. If approval of the benefiting property owner's development is contingent upon completion of the Recovery Zone road improvement, but the benefiting property owner finishes development prior to completion of the road improvement, the benefiting property owner may not use his/her development until the road improvement is completed, or until the condition is removed by the County. If the requester terminates construction of the road improvement prior to completion, the benefiting owner may complete the road improvement in order to satisfy his/her condition of approval, and will receive a refund of the amount paid for the pre-approved Recovery Charge.
 2. If the requester qualifies for a supplemental Zone of Benefit Recovery Charge upon completion of the road improvement project, any benefiting owner who has already paid the Recovery Charge is exempt from the supplemental charge.
 3. If the requester's projected Recovery Charge exceeds the actual costs by more than 5% upon completion of the road improvement project, any benefiting owner who has already paid the Recovery Charge will receive a refund calculated in the same manner that reductions are calculated under 4.03.050 B 6. [Codified by Ord. 05-2000, 7/13/00]

4.03.060 Obligation to Pay Zone of Benefit Recovery Charge

- A. If an application requiring County approval is submitted for any act of development on affected real property within fifteen (15) years from establishment of a Zone of Benefit Recovery Charge, the owner of the affected property shall pay the Zone of Benefit Recovery Charge established by the Board, adjusted to reflect the annual percentage rate multiplier, in addition to any other applicable fees and charges. For purposes of this chapter, the following do not constitute acts of development, and do not constitute a change in use that impacts, or is likely to impact the road facility in a manner that will trigger the payment of a Zone of Benefit Recovery Charge:
1. Approval of a Temporary Permit;
 2. Approval of a permit for a home occupation;
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3. Creation of a new parcel, unless the new parcel has been created to allow additional development on that parcel that is likely to increase the impact on road facilities.

When allocating Zone of Benefit Recovery Charges among parcels newly created by an approved land division, the administrator shall use the method specified during formation of the Zone of Benefit, or any other method specified in section 4.03.030 C 5 that the Administrator finds would more equitably distribute the Recovery Charges.

- B. Except as otherwise expressly provided, neither the County nor any officer or employee of the County, acting in their official capacity, shall be liable for payment of any Recovery Charge, accrued percentage rate or portion thereof, only those payments which the County has received from, or on behalf of, properties within the particular Zone of Benefit shall be payable to the requester for the Zone of Benefit. The County's general fund or other revenue sources shall not be liable for, or subject to, payment of outstanding and unpaid recovery charges imposed on private property, notwithstanding the County's allowance of installment payments under 4.03.060.
- C. The right to recovery under this chapter is assignable and transferable after the requester or their assignee gives written notice to the County, advising the County to whom future payments are to be made.
- D. Upon receipt of a Zone of Benefit Recovery Charge or portion thereof, the County shall cause a record to be made of the property for which such payment is received and remit such funds to the person upon whose request the Zone of Benefit Recovery Charge was established or their assignee, less an administrative fee of up to 5%, as adopted by resolution by the Board of County Commissioners.
- E. The County shall not issue a development or building permit until the charge has been paid in full or until provision for installment payments or other acceptable security has been made and approved. [Codified by Ord. 05-2000, 7/13/00]

4.03.070 Installment Payment

- A. When a Zone of Benefit Recovery Charge is due and payable, the owner may apply for payment in twenty (20) semi-annual installments, secured by a lien on the property upon which the development is to occur, to include interest on the unpaid balance, if that payment option is required to be made available for payment of system development charges as outlined in ORS 223.207.
 1. The Administrator shall provide application forms for installment payment, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors. A non-refundable fee, if any, in an amount established by Board resolution for this purpose shall be paid in advance.
 2. The total amount of the principal included in the installment payments shall not exceed 33 1/3% of the expected value of the land and improvements upon development or redevelopment, as specified in section 4.03.030 G of this Code.
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3. The applicable interest rate shall be fixed at the current prime lending rate plus three percentage points. Should the County exercise its option to issue a Bancroft Bond for the amount owed, the applicable interest rate charged the applicant shall be fixed at the current Bancroft Bond rate plus two percentage points.
 4. An applicant requesting installment payments shall have the burden of demonstrating the authority to assent to the imposition of a lien on the property and that the interest of the owner is adequate to secure payment of the lien.
 5. The Administrator shall docket the lien in the lien docket. From that time the County shall have a lien upon the described parcel for the amount of the Zone of Benefit Recovery Charge, together with interest on the unpaid balance at the rate established by the Board. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.
- B. The Finance Director will be notified immediately by the Collection Department of any account thirty (30) days or more past due. The Finance Director shall then send a letter to the defaulting party demanding payment no later than thirty (30) days following the date of the demand letter. The demand letter shall require payment of all amounts to bring the account current including any applicable interest or other penalty and shall demand full compliance with a time be of the essence clause according to the type of obligation at issue. The time for payment to bring the account current shall be left to the best professional judgment of the Finance Director depending upon the type of debt and amount owed, but in no event shall time for payment exceed the next payment due date, or any other requirements imposed by debt instruments executed by the County in favor of any third party or other agreements that may have been executed by the County.
1. If payment has not been made following the first notice, the Finance Director shall send a second notice detailing the prior defaults and notices thereof indicating that further action, including legal action, will be taken.
 2. If, following the second notice, time for payment has expired, then the Finance Director shall include the defaulting person or entity on a list entitled "Collection/Foreclosure" and consult with appropriate staff and legal counsel regarding the most efficient and cost effective method for collection of the debt.
 3. The Finance Director shall determine if the matter will be referred to legal counsel, a debt collection agency or other method for collection. If referred to legal counsel, a demand letter to the debtor shall be sent declaring default, accelerating the entire balance and requiring full payment within a reasonable period of time not to exceed thirty (30) days. If no satisfactory response is forthcoming, the Finance Director may direct counsel to commence legal action. The Finance Director may extend the time limits for legal action in cases of extraordinary hardship.
 4. Upon referral and direction by the Finance Director, counsel may proceed with foreclosure of the assessment lien or take other legal action authorized by law.
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5. If the Finance Director determines that it is most effective to use the services of a collection agency, the Finance Director may solicit proposals and make a recommendation to the Board regarding selection of a firm consistent with the Clackamas County Local Contract Review Board Rules and ORS Chapter 279. The Finance Director may negotiate a contract regarding the amount of compensation, length of term and methods of collection, subject to final review and approval by the Board. However, the contract shall specifically provide that the collection agency shall fully comply with the Fair Debt Collection Practices Act, 15 U.S.C. 1601, et seq., and shall provide for full indemnification and protection of the County from any and all claims for unfair or unlawful debt collection practices. [Codified by Ord. 05-2000, 7/13/00]

4.03.080 Implementing Regulations: Amendments

The Board may adopt regulations to implement the provisions of this chapter. [Codified by Ord. 05-2000, 7/13/00]
